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PAPERS AND PROCEEDINGS

OF THE

FOURTH ANNUAL MEETING

OF THE

Minnesota Academy of Social Sciences

EDITED BY

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1911

CONTENTS

The Minnesota Academy of Social Sciences

The people of a commonwealth can advance toward better conditions of government and more efficient administration only as public opinion grows more enlightened. Such public opinion is formed largely through the medium of the press, the schools, and associations organized to discuss questions of importance. With a view to providing a medium through which men may confer together upon important political, social, economic, and historical questions affecting the life of the state, the Minnesota Academy of Social Sciences has been organized.

It is believed that the influence of an organization whose members consist of persons interested in these questions would count much toward the formation of sound and rational doctrine relating to legislation and the social and industrial welfare of the people of Minnesota. It is equally certain that the publication of the papers presented at the annual meetings of the organization would stimulate thought upon these questions and that a journal would serve as a suitable means of communication between those interested in the public questions coming up from time to time in the state.

The absence of any state association dealing with these phases of social life suggests the creation of an association that would be state-wide and open to persons interested in these subjects. It needs no argu-

ment that the existence of such an organization with annual and special meetings held in the different towns and cities of the state, and the publication of a journal devoted exclusively to matters interesting the citizens of Minnesota, would furnish a nucleus for an enlargement of public opinion on many questions.

To this end the Academy was organized in April of 1907, a constitution drafted and officers elected. The first annual meeting was held at the University of Minnesota, December 5, and 6, 1907.

The papers and proceedings of the first annual meeting were published in 1908 under the subtitle Taxation. The second annual meeting considered papers relating to the commonwealth of Minnesota, published in volume II. The third annual meeting dealt with some problems of Municipal Government. The fourth annual meeting dealt with the three social problems: The Criminal, A Pure Water Supply and Workmen's Compensation.

I NAME

The name of this organization shall be the Minnesota Academy of Social Sciences.

II OBJECTS

(a) The encouragement of the study of economic, political, social and historical questions particularly affecting the state of Minnesota.

(b) The publication of papers and other material relating to the same.

(c) The holding of meetings for conference and discussion of such questions.

III MEMBERSHIP

Any person approved by the executive committee may become a member of the Academy upon payment of two dollars and after the first year may continue a member by paying an annual fee of two dollars.

IV. OFFICERS

The officers shall consist of a president, three vice-presidents, and a secretary-treasurer.

V. STANDING COMMITTEES

The committees of the Academy shall consist of an executive committee, a publication committee, and such others as may from time to time be required.

The executive committee shall consist of the officers of the organization and three elected members.

The publication committee shall consist of six persons appointed by the president.

The officers and members of committees shall hold their positions for one year.

IV DUTIES OF OFFICERS AND COMMITTEES

The duties of the officers shall be such as usually pertain to such positions. The executive committee shall have charge of the general interests of the Academy. It shall have power to determine the time and place of meetings.

The publication committee shall have charge of the publications of the Academy.

VII AMENDMENTS.

Amendments, when approved by the executive committee, may be adopted by a majority vote of members present at any meeting of the Academy.

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The Fourth Annual Meeting

The fourth annual meeting of the Minnesota Academy of Social Sciences was held in the Auditorium of the Law School of the University of Minnesota, Thursday and Friday December 1 and 2, 1910. The program carried out was as follows:

PROGRAM

GENERAL SUBJECT—THREE SOCIAL PROBLEMS: THE CRIMINAL, A PURE WATER SUPPLY AND WORKMEN'S COMPENSATION

PRESIDENT SIMPSON, PRESIDING

FIRST SESSION

THURSDAY, DECEMBER 1ST, 8:00 P. M.

PRESENT INEFFICIENCY IN THE DETECTION AND TRIAL OF CRIMINAL OFFENDERS

The Criminal Trial—Justice David F. Simpson, President of the Academy, Minneapolis.

Crime Preventives—Albert H. Hall, Chairman of the Committee on Indeterminate Sentence, Relief and Parole of the American Institute of Criminology.

Discussion:

Judge Edward F. Waite, Municipal Court, Minneapolis.

Rev. J. M. Cleary, Church of the Incarnation, Minneapolis.

SECOND SESSION

FRIDAY, DECEMBER 2ND, 9 30 A. M.

The Prisoner and How He Is Dealt With—Frank L. Randall, General Superintendent State Reformatory, St. Cloud.

The Adult Probation System—J. W. Bennett, Editor St. Paul Dispatch, St. Paul.

Significant Figures From the Hennepin County Juvenile Court—Miss Kate Finkle, Asst. Probation Officer, Minneapolis.

Mental Defect and Criminality—Dr. A. C. Rogers, Supt. School for the Feeble Minded, Faribault.

Discussion:

Rev. James Donahoe, Probation Office, St Paul.

THIRD SESSION

FRIDAY, DECEMBER 2ND, 2 30 P. M.

A PURE WATER SUPPLY

Water Supplies of the State of Minnesota—Dr. Richard O. Beard, Prof. Physiology and Director of the Department of Physiology and Pharmacology, College of Medicine, University of Minnesota.

The Public Water Supply and Means of Protecting It—Prof. Frederic H. Bass, College of Engineering, University of Minnesota and Director of the Engineering Division of the State Board of Health.

Discussion:

Dr. Frank C. Corbett, City Bacteriologist, Minneapolis.

Robert Follansbee, Dist. Engineer, U. S. Geological Survey, St. Paul.

FOURTH SESSION

FRIDAY, DECEMBER 2ND, 8.00 P M.

WORKMEN'S COMPENSATION

Minnesota's Part in Workmen's Compensation—H. V. Mercer, Chairman of the State Commission on Employer's Liability and Workmen's Compensation, Attorney at Law, Minneapolis.

The Evils of the Present System of Employer's Liability —W. E. McEwen, Member of the State Commission and Commissioner of Labor, St. Paul.

Employer's Liability and Workmen's Compensation Acts —George M. Gillette, Member of the State Commission and Pres. Minneapolis Steel Machinery Co., Minneapolis.

Discussion:

Fred L. Gray, Fred L. Gray Insurance Co., Minneapolis.

Tom J. McGrath, Attorney at Law and Secretary Joint Labor Legislative Board.

REPORT OF THE SECRETARY-TREASURER

The following is a statement of the receipts and disbursements of the Academy for the year 1910.

RECEIPTS

Balance from 1909	$4.21
Dues for 1909	4.00
Dues for 1910	244.00
Dues for 1911	6.00
Sales of proceedings	37.50
From W. T. Harris, in addition to dues	18.00
Total receipts	$313.71

DISBURSEMENTS

Printing proceedings	219.40
Wrapping proceedings	6.00
Postage	29.00
Express	.20
Stationery	6.40
Tyepwriting	1.15
Copyright	1.00
Record books	1.45
Total Disbursements	$267.60
Balance on hand	49.11

It should be noted that the accounts for the previous year were not closed until February 1st, 1910, while for the current year they were closed on December 1st. This fact makes the financial showing of the Academy for the present year really better than the figures would indicate. As a matter of fact about $100 were saved,

and the larger portion of that sum stands to the credit of the Academy as this is sent to press. The auditing committee found the accounts satisfactory, and approves the above report.

WILLIAM A. SCHAPER,
Secretary-Treasurer.

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GENERAL SUBJECT

Three Social Problems:

The Criminal;
Pure Water Supply;
and
Workmen's Compensation

First Session

ANNUAL ADDRESS OF THE PRESIDENT
AND
CRIME PREVENTIVES

THE CRIMINAL TRIAL

By David F. Simpson

The discussion of a subject involving court trials and procedure necessarily leads into a field of special knowledge usually occupied exclusively by the legal profession. But I take it that a discussion of this subject is in place in this Academy even though the membership be largely non-lawyer. The student of questions pertaining to society's welfare cannot recognize the confines of any special field of art or science as a barrier. Nor should judgment be passed on a question in any art or science by its devotees alone. Too great a tendency to accept as final such expert opinion is responsible in many fields for an undue regard for form rather than substance, for skillful cures rather than simple prevention, for a brilliant legal contest rather than the speedy enforcement of a right. Legal procedure must be judged by its effect on society and the final test of criminal procedure is its effect on crime, and this test may perhaps be better applied by the general student of social science than by the legal expert.

It is unnecessary to justify a discussion of any phase of the subject of crime by first presenting criminal statistics. Whether we admit that law is more frequently violated in the United States than elsewhere or claim the contrary proposition, crime is sufficiently prevalent to indicate tendencies and conditions greatly retarding social progress.

We may safely take one other step without resorting to statistics and accept as a fact based on common knowl-

edge and observation that law is violated with greater impunity in this country than in many other countries of similar culture. As a people we seem to have become somewhat tolerant of the commission of crimes. The honest individual sets for himself a high standard of conduct, but he does not greatly resent an inferior standard in his neighbor. And he seldom goes out of his way to interfere with his neighbor's practices so long as they do not involve a direct loss or discomfort to himself. Society may protect itself if it likes. Society undertakes to do this by appointing officers to protect it, and then puts itself, as to the results of the efforts of such officers, in the position of an independent critic.

For the inefficiency in dealing with crime the people, lawyers and laymen alike, are inclined to hold court and court procedure responsible; at least in part.

Society's attitude towards the courts as one of its institutions has long exhibited an anomalous blending of doubt and faith. The court is heralded as the impartial arbiter of men's fortunes and liberty and generally inspires and retains the confidence and respect of the people. And yet the "law's delay" and the "technicalities of the law" have from time beyond memory aroused impatience and wide-spread criticism. At the present time we find the President of the United States and the National Bar Association, as well as many lesser individuals and associations, persistently demanding a betterment in legal procedure. In the press, frequently the law's delays and technicalities are assigned as a cause, if not an excuse, for lynchings, and recently a justice of the United States supreme court advocated taking away the right of appeal in criminal cases, and this to make justice more speedy and perhaps more sure. Already in several states legislation has been enacted in response to this general distrust of present procedure, and undoubtedly many bills will in the coming sessions be introduced in different legislative bodies making more or

less radical changes in existing methods of court procedure.

With us no major operation is undertaken more readily than one on the framework of our law. If society feels itself suffer it takes an anaesthetic and submits itself to the legislative knife, and this often without any careful investigation as to the existence or cause of the trouble or certainty as to results.

The wide-spread belief, that criminal trials through delays and technicalities are inefficient in fixing responsibility for crime and hence in curbing it, arises probably more from the aggravated circumstances of a few cases, reported in the press, than upon any accurate information as to the usual course and results of criminal trials. To see, if possible, whether such usual course and result justifies this general opinion, and if so the cause of the inefficiency, and possible remedies therefor, are the phases of the general subject of criminal trials, that I have investigated to some extent and shall discuss in this address.

Before entering upon this discussion, however, it may perhaps be well to arrive at an understanding as to the relationship between crimes and punishments; for whether or not we are to consider the betterment of legal procedure as really of importance in dealing with crime depends largely on our opinion of this relationship. If punishment is not a deterrent to the commission of crime, the law's delay and its technicalities lose much of their importance except as economic questions.

Some American criminologists seem to take the position that punishment is justified and useful, if of the proper kind, as a means of reforming the criminal punished; but that future resulting punishment tends neither to deter him nor others from committing crime. In a recent magazine of high standing the broad statement was made that all modern criminologists held this view. While this sweeping statement is not well founded,

it is undoubtedly true, that the emphasis placed upon the reformatory methods of administering punishment have, by a loose process of speaking or thinking, obscured the true function, in criminal laws, of punishment. Our whole system of criminal law expresses the rule that loss must follow violation of law. A prohibition, without a penalty for disobedience, is a nullity. There is no law without a sanction. People usually learn of prohibitive laws through their enforcement, and their enforcement involves punishment. Many of the very acts which we designate as crimes are abhorrent because of the punishment attached to their commission. And the degree of moral wrong in doing different prohibited acts is in general estimation largely dependent upon the extent of punishment prescribed for doing such acts. Our system of law is framed on the theory, that the commission of crime is a wrong and not an unavoidable accident, and it must be administered accordingly. And indeed no method of administering punishment recognizes this principle more fully than the modern reformatory methods. The system of deferred sentences and probation are founded upon the deterring effect of a postponed but impending punishment. The probation itself with the concurrent supervision is a punishment. There is no real basis for a conflict among criminologists as to the purpose or basis of punishment. Punishment, in any degree, for the purpose of revenge, is abhorrent. Cruel and unusual punishments, are more productive of passion and criminal impulses than of restraint. The more humane the punishment, and the better adapted to the reformation of the offender because of its humaneness and its tendency to reform or deter the individual from lapsing into crime, the greater will be its deterrent effect upon others. Humaneness and good will may be shown in punishment as well as in reward; and the statute law, as well as the moral law, may differentiate between right

conduct and wrong conduct, by the consequences inevitably following each; and that to the end that men may choose good rather than evil. I would justify, therefore, a discussion of criminal trials, in this academy because I believe punishment, if just, reasonable, speedy and certain, does largely deter the commission of crime, and is an essential element in creating in society a standard of lawful conduct.

As an aid in determining what the usual course of criminal cases is in this state, I obtained tabulations of several thousand criminal cases, taken from different periods within the last ten years, and from a number of judicial districts in the state.

A criminal is often arrested after committing, within a short time, a series of crimes of the same nature or after committing one act which in law constitutes two or more crimes. Under these circumstances, the practice properly obtains of returning at the one time two or more indictments against the lawbreaker, and upon a plea of guilty or a conviction of one offense the prosecution of the other indictments are abandoned. In order to get fair average results as to the defendants indicted, therefore, it was necessary to eliminate from consideration such cumulative indictments. This I have done with reasonable accuracy. Little difference was shown in the average time, within which cases were disposed of, in city and country districts; but in the final disposition there was a wide difference. The number of cases examined from country districts was not enough to affect the averages of cases from the city districts, therefore the tables prepared showing final disposition of cases are based on the disposition of cases in the city districts.

I will use in the following tables and discussion one thousand cases, and apply to this number the averages obtained by an examination of all the cases investigated.

SHOWING TIME WITHIN WHICH FINAL DISPOSITION IS MADE AFTER ARRAIGNMENT OF 1000 CASES.

Less than 30 Days		Between 30 and 60 Days		Over 60 Days	
730	45 N. S. d. 445 plead guilty 240 tried	85	34 nolle, stricken, dism. 15 plead guilty 36 tried	185	127 nolle, stricken, dism. 30 plead guilty 28 tried

OF THE 304 CASES TRIED, TIME OF TRIAL AFTER ARRAIGNMENT.

Cases Tried	Less than 30 Days	Between 30 and 60 Days		Over 60 Days	
304	240	36	4 second trials 32 first trials	28	4 second trials 24 first trials

CASES APPEALED TO THE SUPREME COURT.

Cases in Trial Court	Appealed to Supreme Court	Reversed in Supreme Court
1000	12	3

AVERAGE TIME BETWEEN TRIAL AND HEARING ON APPEAL 9½ MONTHS.

SHOWING DISPOSITION OF CASES.

Defts indicted 1000				
	490 plead guilty			
	510 plead not guilty	304 dispose of by trial	182 found guilty	
			122 found not guilty	
		206 prosecution abandoned		

Investigation into the time taken to finally dispose of criminal cases shows, that the great majority of cases, 730 out of one thousand, are disposed of within less than thirty days after arraignment. While the classification was made with thirty day periods, if it had been made on ten day periods still greater dispatch would be indicated, because, of the 730 cases disposed of within 30 days, about two-thirds were disposed of within the first ten days. Of the 304 cases tried nearly three-fourths were disposed of within the first 30 days.

The statute allows the defendant four days after arraignment to prepare for trial. Securing and consulting counsel, interviewing witnesses and other matters connected with preparation for trial or consideration of a final plea of guilty often justifies and requires a delay at the defendant's request for some time beyond the statutory four days. And in the cities as a large number of arraignments are frequently made at one time the resulting series of trials makes it impossible for the prosecuting attorney to move all cases at the expiration of the four day period. The disposal of a large percentage of cases within the 30 day period is therefore as to those cases certainly a speedy administration of justice.

The cases disposed of after the 30 days, 270 out of one thousand, may or may not indicate unnecessary delay. In 45 of these cases pleas of guilty are finally entered, suggesting that the delay in those cases was warranted. In 161 the defendants were discharged without trial. As to those the real question is, was such a discharge proper.

The cases tried after 30 days are a small percentage of the whole number of cases. Of the whole number of cases the trial of 3.6 per cent occurs in the period between 30 and 60 days after arraignment; and the trial of 2.8 per cent occurs after the lapse of 60

days. Of the cases so tried about one-eighth are second trials. The delay in the others must be accounted for, either as necessary for some reason such as the absence of witnesses, or because of the failure of the prosecuting attorney to move the case. Whether caused by necessity or negligence the number is relatively small.

From the frequently expressed criticism of delays, caused by appeals to the supreme court and reversals in that court upon technicalities, we are prepared to find, on investigation of such appeals, a somewhat serious interference with the prompt and certain administration of justice. In fact, however, we find that of one thousand criminal cases disposed of in the district courts, only 12 are taken to the supreme court by appeal, and of these only three are reversed. Therefore the procedure in appeals only applies to a relatively small number of cases.

While it thus appears from an examination of a large number of cases that the disposition of any considerable number of them is not delayed and is not rendered uncertain by technicalities, however, in another respect apparent inefficiency is disclosed.

Referring to the table showing disposition of cases arising in city districts: out of 1,000 persons indicted, 490 plead guilty, 510 plead not guilty. Of those pleading not guilty in 206 prosecution is abandoned and upon motion of the prosecuting attorney a nolle prosequi is entered or the case is dismissed or stricken from the calendar, 304 are actually tried, with the result that about 60 per cent are found guilty by the jury and 40 per cent or 122 are found not guilty. Thus, by the action of juries and the motion of prosecuting officers combined, in 328 cases out of each thousand, that is in approximately one-third of all the cases, the defendants are discharged. This is after excluding cumulative indictments from our list of cases.

These figures would show either, that grand juries find indictments against many innocent persons, or that prosecuting officers and petit juries discharge many guilty ones. While examination of registers will not disclose which is the fact, observation of the conduct of grand juries, petit juries and prosecuting officers will incline to the belief: that grand juries are more prone, to fail to indict guilty persons than to indict innocent ones; that many defendants, discharged by the verdict of petit juries, were in fact guilty of the offense charged and such guilt was clearly established on the trial; and further, that many defendants, who were in fact guilty of the offenses charged and whose guilt could have been established by available evidence, are discharged upon motion of prosecuting officers without trial.

Contrast this record of the disposition of cases in city districts with the record in one outside county, covering a period of five years. Thirty-seven indictments were found. To 33, pleas of guilty were entered. The other four defendants were found guilty on trial. No defendants were discharged. And in fact in all the country districts examined the discharge of a defendant without trial is very unusual.

It is true the final orders in these cases are made by the judge; but, from the nature of his position and duties, it is seldom that he can have independent knowledge as to the guilt or innocence of the defendant; and he must rely upon the prosecuting attorney's statement as to the facts and evidence bearing on that question.

In the one respect, then, that a marked inefficiency affecting a considerable number of cases is shown in criminal trials, the responsibility rests not with the law but with the persons who administer it.

That juries refuse to find defendants guilty, when evidence is adduced establishing guilt, is attributable largely to the same common tendency to disregard law,

to which much crime is attributable. Jurors incline to convict criminals only for violating those laws the violations of which are obnoxious to the jurors. It is not the breaking of the law, but it is the doing of an obnoxious act, that brings most surely conviction. The phrase "It is the law" has lost in power with jurors as well as with criminals. Laxity in enforcing law, not only strengthens crime, but weakens as well an instrumentality for the punishment of crime.

This same attitude of the public towards crime, is responsible, in some degree, for the apparent inefficiency of peace and prosecuting officers that results in the abandonment of criminal charges against such a large number of defendants. Peace and prosecuting officers alike come to feel, that, whether a lawbreaker join the many who go unpunished or the few who receive punishment, is a matter of little moment. A high degree of industry, persistency, and integrity, are required to overcome the opposition continually met by prosecuting officers. In view of this, it is of the greatest importance that the public both encourage and demand efficient work on the part of such officers.

I might close at this point, with the to me comfortable conclusion, that—because most criminal trials proceed with reasonable dispatch and without troublesome technicality, and because where inefficiency affecting a large number of cases is shown, it is inefficiency in the administration of the law and not in court procedure—the criticism of court procedure is not well founded.

But this would be an evasion rather than a defense; for if avoidable delay, and uncertainty through needless technicality, affect even a small minority of cases, it is not only as to those cases unjustifiable, but it is as well a continual menace in all cases.

Referring again to the tabulation of cases; we observe that, while only 12 out of a thousand cases are

appealed to the supreme court and only 3 of these are reversed, an examination of the records disclose, that there is great delay in the hearing of these cases, and that the questions considered on the appeal are frequently technical questions not involving the substantial rights of the defendants, and that verdicts are sometimes set aside on errors in procedure not affecting the merits. It is hardly necessary to state, that no criticism of a court, for following existing statutes, practice and precedent, is intended or warranted.

An examination of cases appealed for five years past shows, that the average time elapsing, between the trial in the court below and the hearing on appeal in the supreme court, is between nine and ten months. Of the cases examined the shortest time taken between trial and hearing on appeal was three months; the longest time was over two years.

Under the present system of putting criminal appeals on the general calendars of the supreme court at the beginning of the April and October terms, much delay is unavoidable. A case not ready for the April calendar is held in abeyance until the beginning of the October term. As the supreme court is sitting during most of the years, there seems to be no reason why this delay should not be avoided by putting criminal cases on the calendar during term time. The time for hearing could be specified, allowing only such time after the appeal is perfected, as is reasonably necessary for making up the record and preparation of briefs. In this way the average time, required for hearing cases on appeal, could be reduced from nine or ten months to two months; and this without sacrificing any right of the defendant, and without interferring with other business in the appellate court.

Again we find, under the present method of setting criminal cases for hearing, that even after the cases are

put on the general calendar, instead of their being heard immediately on the opening of the term, they are set for hearing, on an average, about two months after the beginning of the term. When we remember, that at the opening of the term more than seven months, on the average, has already elapsed since the trial of the case, no good reason is apparent for any further delay. In fact, the criminal cases are given precedence in the setting of the calendar, undoubtedly to expedite the hearings; but in practice this privilege is used to delay hearings. The responsibility for this delay lies with the local prosecuting officers.

In addition to this delay, it is a matter of common knowledge, that trials, in certain cases, are prolonged unreasonably, with resulting waste of time, money and respect.

A discussion of the means, of avoiding such delays and the uncertainty of needless technicality, takes us upon uncertain and debated ground; especially as in my opinion any change to be effective, must affect at least three of our present fundamental conceptions of a jury trial, and these pertain alike to civil and criminal trials.

First, a trial is a contest between opposing sides, not an investigation of an issue by judge and jury.

Second, a failure in the observance of the respective functions of judge and jury may cause a mistrial even though the tribunal decide the merits of the issue fairly.

Third, in this contest only such facts as are relevant should be submitted to the jury, and if against objection, irrelevant facts are heard by the jury, for such error a mistrial may result.

Considering the first of these conceptions: The very essence of a contest is, that each side shall have the fullest opportunity to use all permitted means to gain its end; and any outside control of the extent to which permitted

means shall be used, at once destroys the conception of a fair contest. And the amount of time consumed, is almost wholly dependent on the respective parties to the trial. At the end, the court is required to decide the issue, not perhaps in accordance with existing facts, but upon the facts the respective parties see fit or are able to present. All familiar with the course of trials know, that a particular issue may be tried in one day or ten, depending wholly upon the methods or characters of the attorneys who happen to be engaged in the case. This theory of a contest, is carried into the form of the subpoena for witnesses. A person is summoned to court to testify "in behalf of" one or the other side. He is invited to become a partisan, and he usually accepts the invitation. Under our practice the judge becomes little more than an umpire. An impartial hearing is sought, less through the control of the proceedings by the presiding judge, than through the efacement of the presiding judge.

This tendency has been carried to an extreme in this state, and generally in the United States. The practice in the parent country of our jurisprudence, England, permits and requires the presiding judge, to control upon his own volition the course of the trial, to interrupt counsel and himself conduct examination of witnesses. And under the practice prevailing in other countries the presiding judge, is the examining magistrate, and also participates in the deliberations of the jury.

This petty limitation placed upon the judicial power, under our practice, is an anomaly, in view of the much greater grant of power in the right to finally determine the issue. But it seems inherent in our present conception of a legal trial. Until the duly constituted tribunal, when called upon to settle disputes, has the right, to investigate into the facts, as well as to hear the facts presented, and to examine the witnesses as well as to listen to testimony, the litigant's "day in court" must continue

to be his, to use much as he wills, either to reveal or obscure the facts, either to expedite or retard the administration of justice.

Referring to our second enumerated conception of a trial; which gives a litigant, a vested interest in the boundary line between the functions of court and jury, so that if that line is not fairly maintained, he has cause for complaint. The separation of the function of judge and jury in a legal trial has an interesting historical basis. It has a present justification, in the presumption that the judge is learned and experienced in the law, and that he can therefore advise and direct the untrained jurors in matters involving legal knowledge. If the judge fail to submit the true issue to the jury, a litigant is deprived of a substantial right, and should be heard to say that his case has not been tried. But if a judge calls the jury's attention to the testimony of a certain witness and suggests that in his opinion it is in conflict with the testimony of other witnesses, and that it does not seem to harmonize with certain surrounding facts, why are the jury thereby prevented from fairly determining the issue on the merits? And yet in this state such suggestions are cause for a new trial. Why, except as a point of etiquette, should a judge's lips be thus sealed when a jury is in the box, while in other cases he determines the facts? This to the student of social science, who is not interested in the maintenance of forms of legal procedure, may well seem useless technicality.

Referring to our third fundamental conception of a trial; that everything that does not properly bear on the issue being tried must be excluded from the minds of the jury; we have an ever present, ever productive source of delay and technicality in trials, civil as well as criminal. Around our jury system has grown up a body of rules of evidence so comprehensive, that he, who

knows well the law of evidence, knows the substantive law. In addition to general rules governing the admissibility of evidence, the courts have applied such rules to each crime and element of a crime, and to the particular issues in civil cases, until detail after detail is passed upon and embodied in almost innumerable precedents. While the general rules and principles are reasonably uniform and certain, the application to particular facts and situations, vary in different jurisdictions, and in the same jurisdictions at different times. And continually, new combinations of facts, require a new application of the rules, and different judges, under such circumstances incline to different applications. This is, of course, unavoidable where different minds arrive at independent rational conclusions. Neither the elaboration of these rules nor differences in their application is a subject of criticism. The distinguishing between relevant and irrelevant facts is necessarily involved in attempting to arrive at a disputed truth, and a more or less complete system of rules for making such distinctions would in time be established by any tribunal charged with the duty of determining disputed questions. And the more comprehensive and exact such a system becomes, the greater aid it should be in arriving at just conclusions. But if a departure from such rules, as to the proof of one fact, shall destroy the force of the conclusion based upon many facts properly proven, then the more elaborate the system of evidence, the more difficult it becomes to properly determine a question. The observance of rules of evidence becomes an end, not an aid, in the trial of cases. We set our hurdles so high that we can't get over them.

The application of substantive law to particular cases must always present difficulties and uncertainties; but in matters of practice and procedure no avoidable difficulties should be created. To do this is to wholly lose

sight of the purpose and justification of rules of practice.

To illustrate: a criminal case is tried. On the trial, many relevant facts tending to show guilt are established by the evidence, and all facts tending to show innocence are submitted to the jury. A verdict of guilty is rendered, and an appeal taken. The court determines that the evidence is sufficient to sustain the verdict of guilty and refuses to set it aside. Take exactly the same situation, but add one irrelevant fact proven by the state, and the appellate court, for the erroneous admission of such irrelevant fact, sets aside the verdict. Upon the merits, the two records cannot be distinguished. The court, in the second instance, acts on the theory, that, notwithstanding the fact that the evidence properly received was ample to sustain the verdict of guilty, the jury may have been prejudiced or misled by proof of a fact, which did not tend to show guilt; and therefore the defendant did not have a fair trial.

The foundation of jury trials is the belief that a jury is a competent tribunal to determine issues of fact. To do this; the jury must hear and remember the evidence received; where there is a conflict in the evidence they must resolve such conflict; they must determine what facts are established by the evidence submitted; and they must determine what inference or conclusion fairly follows from the facts so established, and decide the issue accordingly. We demand, therefore, of jurors, memory, reasoning power, judgment and integrity; and yet the next moment, we deny to them these qualities by holding, that if they have heard a fact that tends to prove nothing on the issue being tried, they are not only incapable of so seeing, but they also become incapable of properly considering the relevant facts submitted. We are trusting jurors too much or too little.

The question on appeal should always be, "Was the true issue submitted to the jury for decision, and was it decided in accordance with the evidence properly submitted?" The granting of new trials for error in practice or procedure, has come to be recognized by lawyers generally as wrong. And the rule is coming to be generally commended by lawyers and more or less followed by courts, that error without prejudice is not ground for a new trial. With the greatest respect for those who announce and advocate this rule, an examination of the cases in which it is applied, in my opinion, shows that it does not, as generally understood and applied, greatly help the situation. Instead of the test, "Is the record free from error" we have the test "Is the record free from error with prejudice." And because error is defined by a system of well thought out rules; while error with prejudice, must always largely depend for definition on the opinion of the appellate tribunal as to the facts and state of evidence in the present case, it would seem that the line, separating trial and mistrial, has not been made more certain, but has simply been moved. In every case upon a motion for a new trial, after a verdict by a jury, the question should be, first, was the true issues submitted to the jury for determination; second, is their determination sustained by the evidence properly received, treating as evidence received, any evidence properly offered by the moving party and refused. And this test should not be changed because an irrelevant fact was proven on the trial.

To farther illustrate the points heretofore discussed, let me give the actual conduct of one recent criminal trial in this state that seems to embody every element of inefficiency in criminal trials that has been referred to. In this case indictments were found against the defendant and he was arraigned thereon. The trial was then postponed to the next general term of court to

begin three months thereafter. At this term of court the case was again continued to the following term, beginning two months thereafter. It was then continued for four months more. At the next term of court the prosecuting attorney suggested the case be set late in the term. The presiding judge set it early in the term and announced it must be tried. The case was tried at that term, more than eleven months after the date of arraignment; the defendant was found guilty by the jury; and sentence was passed. Proceedings were stayed and an appeal taken to the supreme court. The trial occurred four months before the opening of the October term of the supreme court, but the appeal was not heard in the supreme court till late in the following April term, more than a year after the date of trial. The case was reversed in the supreme court, without any suggestion that the evidence did not fully establish the guilt of the defendant, because of an assumed possible effect of an irrelevant fact upon the jury. The case, being thus remanded, was placed on the next general term calendar of the court below, occurring two months after the decision in the supreme court. Seven months thereafter the defendant was tried on another indictment. Upon this trial, though the evidence appeared to establish the commission of the offence charged, the jury acquitted the defendant, probably because the evidence showed apparent subsequent restoration. Thereupon, although indictments were pending against the defendant charging many other serious violations of law, all the indictments were on motion of the prosecuting attorney nolled, and the defendant discharged, two years and ten months after the defendant was first arraigned.

From the investigation and consideration detailed I arrive then at the following conclusions:

First, the great majority, substantially all, of the

criminal cases begun by indictment in this state are disposed of without delay and without troublesome technicality;

Second, the fact that in nearly one-third of the cases in city districts the defendant is discharged either by verdict of jury or voluntary abandonment of prosecution by the state, indicates a miscarriage of justice in a considerable number of cases;

(a) That the remedy for this inefficiency lies not in a change in rules of procedure, but in a more vigorous and conscientious discharge of duty, by peace and prosecuting officers and petit jurors, prompted by a more general regard on the part of the public for the law and its enforcement;

Third, that in the few cases appealed to the supreme court great and unnecessary delay is occasioned;

(a) That part of this delay would be obviated, under present procedure, if the criminal cases were heard on the first days of the term;

(b) That all unreasonable delay can be avoided, by permitting the placing of criminal cases on the supreme court calendar during term time, and setting them for hearing within a prescribed time after appeal is taken;

Fourth, that present court procedure does offer an opportunity for unreasonably prolonging trials, and for obtaining new trials and resulting delays and miscarriage of justice on purely technical grounds. That any effective change in procedure to obviate this, must change certain fundamental conceptions of jury trials; that these conceptions are not essential to the determination of a case on its merits, but make procedure an end rather than an aid in trials.

CRIME PREVENTIVES

By A. H. Hall

A consideration of the causes of crime, involves a survey of the whole field of social and individual life. The elimination of those causes is the despair of philosophy, science and law, and the hope of philanthropy and religion.

Society is awakening to broader and clearer ethical vision. New duties and burdens press upon it. The pains of many weaknesses and defects in its structure, shoot their monitory warnings through its frame. It can no longer discharge duty by simply visiting punishment upon its offending members, it must restore efficiency and health, it must prevent recurrence.

Its nerves of communication now vibrate to every living member and extremity; and conscious humanity now looks itself in the face, and in every eye discovers that it is one soul in many bodies, living a common life, in one land, bound to a common destiny.

No man liveth to himself. Independence is only conscious intra and inter-dependence. Isolation, relative, is disease, crime, sin; absolute, it is death, physical, social, moral.

The supreme fact, the purpose and culmination of creation is human life.

The final and constant purpose of the State must be to preserve, multiply and elevate human life, by providing the most favorable conditions for its generation and cultivation.

Society is beginning to realize that under present conditions, it is raising its own criminals, is plowing the land, sowing the seed and reaping the horrid harvest.

With patience and employing every power, manifest or hidden, in earth or heaven, it must proceed to clear the soil of humanity of the jungles of savagery and the weeds of vice. That in the place of ignorance, idleness, lust, cruelty, rebellion, hatred and war, shall spring up and flourish knowledge, industry, chastity, humility, obedience, love and peace.

In this spirit and to these ends, I venture the following suggestions:

First. Safeguard the doorway of life and exert every precaution of the State against the birth of the unfit. Criminal tendencies, moral bents and perversions are unquestionably transmitted by inheritance.

Lest humanity forget this unerring retribution, its warning is thundered in the Decalogue "Visiting the iniquities of the fathers upon the children unto the third and fourth generation." The State's first and highest duty for the preservation and elevation of human life is to keep life pure and unpoluted at its source.

The means and methods of such regulations are delicate and difficult. Their perfection involves a wiser and wider regulation of marriage and the commingling of the sexes, and more public probing for physical and mental soundness in the light of our wider knowledge of the laws of life and health.

The prohibition of marriage should not only include the laws of consanguinity, the imbecile and the insane, but should go further and include the epileptic, the physical and mental degenerate. all persons afflicted with communicable and inheritable diseases, especially venereal disease. These regulations should be enforced by requirement of rigid expert medical examination and cer-

tification of all applicants. They should also include the prohibition of marriage of all persons of confirmed criminal habit, that is all persons having a record for a second conviction of crime involving moral turpitude, who have not earned or received certificates from the Board of Parole or Discharge of the penal institutions where they have been confined, attesting their rehabilitation and fitness to resume and discharge moral and social obligations.

Besides the prohibition of marriage, the State should insure the celibacy of the same classes whose unfitness is permanent, and particularly of those clearly proven to be confirmed in criminal habits and especially in crimes of sexual violence, by sterilization or segregation, or by both of those agencies, and of both sexes.

Sterilization of males by vasectomy is condemned by some because its subjects may, they fear, pervert their impotency by giving freer rein to licentiousness. These objections, if they were well-founded, apply rather to the exceptions and perversions of the rule, and may be covered by supplemental segregation and isolation from all female companionship.

Second. Let the State assume and zealously exercise general guardianship over childhood. This does not involve the substitution of the State for the parent. There is no place for a child like home, but the State should fix the standard and regulate the duties of parentage. That it may regulate, it must supervise parental training and control, and must penalize parental delinquency and all adult complicity in child-delinquency, and whenever the welfare of the child requires, the State should remove deficient parental control and substitute a better.

Juvenile courts, vested with equitable and discretionary powers (practically parental in scope) have opened doors of wide opportunity for wise direction and

control of youth, and the beneficial exercise of many supplemental agencies for the moral and industrial training of humanity in its plastic stage.

The idleness and vagabondage of children, especially in large cities, is a condition from which large numbers of criminals graduate and its correction calls for special treatment.

The recent International Prison Congress, expressing the serious thought of the world on the subject, adopted the following resolutions:

"Resolved: That to prevent habits of vagrancy and idleness among children in large cities, there should be:

"I. Laws making parents responsible for the wrongdoing of their children; to compel deserting fathers to return to their duty of support to their children; allowing children to be taken from unfit homes and properly placed for training and care.

"II. Greater co-operation between school authorities and the public; better adaptation of school curricula, both in interest and in practical use to the individual needs of children; and that there shall be more kindergartens and greater recognition of training in handiwork of the children.

III. Vast additions to play-grounds, wholesome recreation centers, gymnasiums and athletic fields, as the surest preventives of juvenile mischief and crime, and as affording young people places where they may learn to bear defeat with courage and success with modesty.

"IV. Lectures to parents on practical subjects that shall tend to make better and happier homes as the wisest way to keep the children from the idle, wandering life.

"V. A stronger influence on the part of the press and the pulpit to enforce the sentiment that the best bulwark

against juvenile delinquency is to care for the children in such a way as to prevent them from becoming vagrants and idlers."

"The Swiss method for counteracting such tendencies is by the establishment of guardian schools into which are gathered children who have not proper oversight during the hours out of the regular school and in the evenings. The guardian schools of Basel for instance, are organized and supported by the State and are open every day from mid-November until mid-March in the evening. More than a hundred teachers, men and women from the school force, but receiving extra pay, manage these schools, which are rather recreation classes than schools in the ordinary acceptation of the word. They play games, tell stories, sing, crochet, knit, embroider, sew, and in good weather are taken out of doors for games or walks. The teachers devote their entire time to supervising the work or the play, not being allowed to read or knit or sew themselves. Each class is supposed to have about thirty-five children in it. An inspector general for the city visits all of the schools and reports to the school authorities. The cost of material for games and work as well as for luncheon is borne by the State. Basel, with a population of 130,000 has 2,000 children in these guardian schools."

The State owes a special duty, which has long been neglected, for the protection of illegitimate children, and should so modify existing laws as to make the care, support and inheritance of such, as nearly as possible identical with legitimate children. The recommendations upon this subject by the same International Prison Congress are most pertinent and emphatic and are recommended to your thoughtful consideration.

Third. The State should protect, encourage and promote the conditions and environment essential to the

cultivation and enjoyment of full individual and social life, and eradicate all that mars or prevents it.

The great feeders of crime are the pernicious and destructive habits of intoxication, narcomania, prostitution, gambling and vagrancy. They are all perversions of human desires and energies that have gained mastery, through indulgence, over human wills, that, under more favorable conditions and environment, should have found pleasure and exercise in enterprise, labor and the social virtues.

The public intoxication saloon, by means of strict and stricter regulations and restrictions, should be put into process of final extinction. More and more publicity of the physical and mental ravages of intoxicants and narcotics should be pressed to the end of putting their use under the ban of common public condemnation. As a practical step to this end, and as a clearly available and enforcible field of prohibition, why not prohibit the use of intoxicants by all elective and appointive public officers and servants? Private masters find little difficulty in enforcing abstinence upon *their* servants. Why not the State?

The evils of prostitution and its pernicious results in the corruption of morals and provocation of crime will not be abated by the suppression of the public brothel. Conditions demand a vigorous propaganda against all lustful indulgence, secret as well as open, and within as well as without the bonds of matrimony.

Society must be stung by scorn of its inconsistency that enforces rigidly one standard for the woman and tolerates another for the man. No circle should be allowed to escape rebuke and reproach that banishes the fallen woman, though a victim of her weakness, while it welcomes the male libertine.

The evil ramifies all society and drags its serpentine course through the whole record of the race. The State, at least in the present conditions of public morals,

can but regulate and in part suppress its public indulgence. My own observation inclines me to favor segregation with rigid police and medical inspection, registration and identification of all inmates. Require a register for all visitors and rigidly prohibit the dispensing of all liquors on the premises.

There is an abundance of law prohibiting gambling by games of device or chance, but a woeful laxity in its enforcement, because our commercial life has become permeated with the gaming spirit. A willingness, yea, an eagerness prevails to get something for nothing, to reap where others have sown, to acquire profit and advantage without returning a fair equivalent. Reckless speculation, cunning deceit, fraudulent concealment, the oppression of commercial power, and the bluffing of financial audacity, are the too common weapons of modern business. When the ventures succeed, and in the proportion that the success is large, these practices escape condemnation, and their gaming winners wear, unrebuked, the laurels of success. In such a state of morals, should we expect anything else than a tremendous increase in larceny and all crimes against property? This army of criminals musters only the petty and unsuccessful imitators, who have been caught on the losing side of the great gaming scramble.

The reaction from the wild race for wealth and indulgence of extravagant luxury, and in part, as a result of the same perverted moral sense respecting property rights and personal service, is spreading a plague of vagabondage in America that threatens to grow into a veritable army of volunteer rebels against the social order. These vagabonds live in an atmosphere and maintain an attitude that only waits the opportunity of criminal attack. Their rendezvous are the hotbeds of crime. The recommendations of the International Prison Congress for the treatment of this evil is comprehensive. I quote it:

"As a necessary means for aiding in the suppression of wilful and professional vagrancy and mendicancy, workhouses (maisions de travail) for professional mendicants and vagrants should be established. Within these institutions comprehensive systems of classification of inmates should be made, separating the inmates requiring discipline from the other inmates, and providing a class, or classes, for the more industrious or better behaved, with such inducements as are proper and conducive to the reformation and progress of the inmates toward rehabilitation.

"Such workhouses should make a permanent feature of agriculture and industrial training, and the period of detention should be sufficiently long to provide a thorough training and also to act as a deterrent to offenders.

"The physical and mental condition of the inmates should be carefully observed and studied.

"Conditional liberation and a system of subsequent supervision, and if possible, co-operation between official and outside charitable authorities are indispensable parts of a proper system of treating mendicancy and vagrancy.

"The extension or establishment of a system of identification and classification of professional mendicants and vagrants is advocated."

In connection with the recommendation for identification of vagrants, I suggest that if all habitual drunkards, those who have been repeatedly convicted of intoxication, should be identified and registered, and lists thereof, with their identification, furnished by clerks of municipal courts and superintendents of workhouses to all dealers in intoxicating liquors, prohibiting sales to such habitual drunkards, it would be an efficient aid in preventing intoxication.

The unsociability of large cities and the lack of means or opportunities for innocent, attractive social intercourse drive the isolated and lonely into the brilliant

and inviting doorways of vicious indulgence that lead to crime.

There is need of a vigorous social awakening and a broad social propaganda that shall break down the false barriers of social isolation, and enable the whole people to make provision for the common enjoyment and diversion.

These social cravings and provisions for their gratification are as much necessities as public utilities for transportation, light and the like. The recent municipal ball at Milwaukee offers a valuable suggestion and invites imitation. The proposal to use school houses in the evening and on Saturdays for neighborhood gatherings, club rooms, recreation rooms and gymnasiums should be adopted. The noble appeal of our Mrs. Winter in the public prints a short time ago should not fall on deaf ears.

There are grave defects in our educational system that have direct bearing on the increase in crime.

It is the reproach of Christian America, that the intensity of dogmatic difference over unessential points of interpretation and doctrine, should prevent agreement upon the essential teachings of Jesus. The consequent exclusion of religious teaching from our schools has resulted in the practical exclusion of moral training also. Our system of education lacks the first and most important element of youthful training, that is, reverence for God, which is the "beginning of wisdom."

The "Golden Rule," the one great commandment proclaimed by Jesus, is likewise the kernel and core of every other religion the world has ever known. Is it not strange that Christians should exclude its teachings from the public schools?

Religious and moral accountibility and responsibility and obedience to the ethical standards proclaimed by Jesus should be taught and inculcated by precept and

example, and their maintenance should be trained and drilled into our youth as the most important element of their education.

Another conspicuous failure in our system of education, bearing directly on the theme in hand, is the omission to specifically train each pupil to become a self-supporting unit of society. This should not be left to the closing years of a course, but begin and be practically enforced as soon as the strength of the youth will permit. They should not be so much *taught* industry in cramming their heads full of facts and ideas, but rather be *made* industrious by training their hands and their eyes to perform skillful and profitable service.

I have briefly and imperfectly called attention to some, perhaps not the most important, agencies that might be exerted by society and the State to prevent and eliminate crime. But were all these and many others inauguarated and pursued with vigor, they, of themselves, would succeed only in measurably lessening, they could not eradicate crime. The final cure must be a remedy that acts directly on the human will, and operates at the very springs of human conduct. That can be found only in the power and assistance of those subtle aids that men seek in their lives by which to control rebellious passion, to restrain irregular inclination, to purify the motives of conduct and to faithfully conform character to the ideals of patience, humility, integrity and rectitude. That power is the *Love of God,* the one and only Creator and Re-Creator of human life.

DISCUSSION

By Edward F. Waite

Judge Simpson's instructive paper plainly shows that the delays and defects in criminal procedure are almost wholly due to prosecuting attorneys and juries. As a humble member of that branch of the legal profession in which he has become distinguished—the bench—I am content to let the responsibility lie where he leaves it. I shall refer to only one of his incidental points—that the work of juries is often marked by disregard for law. No one can be at all familiar with court proceedings, and especially criminal trials, without being impressed with the ease and frequency with which juries brush aside the instructions given them by the judge. And yet it is no less their sworn duty to accept and act upon them than it is to honestly determine the issues of fact; and to ignore them is in no wise warranted, though conscientious jurors often convince themselves to the contrary—by the belief that substantial justice is thus arrived at. In court, at least, the law should be obeyed because it *is* the law; and so long as the mass of our more intelligent citizens, who are fairly represented by trial juries, fail to do this, they are in no position to criticise officials who take a like attitude in the exercise of other public functions.

Mr. Hall has given us a sombre glimpse of the principle of heredity but there is a brighter side. Who could listen to him without knowing that he has in his veins the blood of at least one Methodist parson? It was a good sermon, and there were few points at which I could

not say "Amen." Let me note in passing how suggestive it is that the growing social consciousness to which he referred has brought us so far that we listen calmly to such radical proposals as he has made. What cries of "ultra-paternalism" they would have called forth a few years ago!

While I am not disposed to take exception to Mr. Hall's proposed safeguards of marriage, I observe that he falls into what seems to me the error of assuming that all persons who have been imprisoned for crimes involving moral turpitude may be classified without discrimination, as persons of ascertained criminal dispositions and are properly subject to regulations as to marriage based upon that classification. The fact is, I think, that a large number of those who are committed to penal institutions, even for the graver crimes, are but casual offenders who have yielded to special temptation, and who are not greatly different from the majority of those who keep out of prison. Not a few of the defects in our criminal law and penal administration grow out of failure to take account of the difference between these offenders and those of a settled anti-social disposition. We bunch together as "criminals" those who have been convicted of serious lawbreaking, and deal with them according to the offense that has been committed and detected; whereas the proper basis is the character of the individual. The commission of serious crime indicates deficiency as compared with the normal standard; it does not necessarily indicate depravity or degeneracy. If he offends through weakness the offender needs the discipline that makes for self-control, if through depravity he needs a profound psychological change, and nothing short of this will fit him to be at large. This is the principle of the indeterminate sentence, one of the advanced ideas of the day in the field of penology, approved by the International Prison Congress recently held in Washington,

and surely winning its way to general adoption. Meantime, without waiting for ultimate reforms, let us promote a terminology that distinguishes between the criminal, the man whose business is crime, and the man in whose life crime is a casual and exceptional incident.

Second Session

THE CRIMINAL

THE PRISIONER
AND HOW HE IS DEALT WITH

By Frank L. Randall

When sentence has been pronounced the ordinary official duties of the judge terminate, and the sheriff takes the prisoner back to jail to remain until the clerk has prepared the commitment, and then the sheriff takes the prisoner to the institution designated in the papers, and gets a receipt.

For one prisoner the sheriff may have one guard, and for two additional prisoners he may have one additional guard.

Formerly on sentence to the reformatory the institution sent for the prisoner, and that practice obtains in some of the states at this time, but in this state, a legislative change was made. The former method is less expensive.

Prisoners are delivered at the institutions at all hours of the day and night of any day in the year.

It has been thought that it would be better to induct prisoners (and particularly young ones) into their new surroundings at a time and under circumstances calculated to give them as favorable an impression as possible, but no regulation prevails in this behalf.

The sheriffs, as a rule, seem to be a fine body of men, who are both diligent and discreet in the performance of their duties, and who prepare the prisoner, in some degree, for the treatment he is to receive, and it is only rarely that a prisoner on his way to the institution is given spirits, or otherwise wrongly dealt with,

and when such an incident occurs it is usually the fault of a thoughtless deputy or guard.

When a prisoner has been delivered he is first searched, then bathed, and then dressed in uniform. The clothes he brought with him, if of value, are sterilized, and kept for him. Next he goes to the physician who gives him a thorough medical inspection, makes memoranda, and reports.

The chief executive of the institution, or his deputy, interviews the prisoner as soon as opportunity permits, and makes a more or less voluminous record, and the prisoner is put to work in such capacity, and under such conditions, as are consistent with his mental and physical fitness, and his attitude.

Another examination is still to be made, i, e., that of the school secretary, who designates the class to which the prisoner is to be assigned.

He is furnished with a pass book, which contains the rules of the institution, as well as his personal account, and which is balanced monthly and returned to him.

Unless he executes written authority for the opening of his mail, such letters as come for him will be retained until the time of his release, or returned to the writers, but so few prisoners refuse to make the order that that matter is worthy of no particular consideration.

He is permitted to write to his relatives at regular short intervals, has access to a good library, may have a reasonable amount of tobacco, if over eighteen years of age, and accustomed to its use, and may receive circumspect visitors.

In some instances prisoners have been permitted by the managing board, to visit relatives in extremity, or to attend their funerals.

Experience may be said not to indicate the wisdom of too frequent an extension of the last named privil-

ege, for the expense, which must be borne by the prisoner or his family, is usually considerable, and the presence of the necessary guard is naturally more or less embarrassing.

There are grades among the prisoners and the new arrival is entered in the intermediate grade, from which he may progress or recede. If the latter, his privileges are largely cut off. When he reaches the highest grade, the fact appears in or upon his raiment, and he is accorded additional privileges.

In almost all penal institutions are persons known as "trusties." They are prisoners who have won the confidence of the management for integrity, and who are esteemed to possess a sense of honor. Sometimes they carry considerable responsibility; but they are not given disciplinary authority over other prisoners.

All prisoners who can perform labor, have an opportunity to earn some wages, and under recent enactment of the legislature, the needy wives, children, and other dependents of prisoners may receive aid out of the funds provided for the maintenance of the institution.

The discretionary exercise of this power is not required to be as frequently called into requisition as might be imagined, but it has a salutary effect and enables husbands to return to their families on better terms than would otherwise be possible. If Edward Dantes had been in a Minnesota prison his father would not have perished for want of food. Neither would Mercedes have been unaware of his whereabouts.

The allowance of wages permits prisoners to procure many necessaries which were formerly denied. Among the most important of these is dentistry. The employment of staff of doctors of dental surgery to minister to all the wards of the state has been considered, and while affirmative action has not been taken, this important subject has not been dismissed.

Many prisoners are in need of medical, hospital and surgical treatment, and they receive it fully, and without cost.

They are bathed at regular intervals, well fed, and suitably clothed. They have religious ministrations of their choice, moral instruction, entertainments and holidays.

A synopsis of the news of the world is printed or bulletined for their benefit, and they have their own paper, for which they may write, if they wish.

At any and all times they may communicate, under seal, with the Governor of the State, the judges, the Board of Control and the head of the institution.

The accommodations in their quarters are quite convenient and complete, and much better than are found in the ordinary home.

They do not sleep in their day clothing, they have an extra suit of clothes for Sunday, and polish to make their shoes presentable for inspection.

They are given the opportunity to learn the work of a respectable occupation, and employment is found for them when their time comes to return to society, excepting, perhaps, in the cases of some of those who serve fixed terms.

The State of Minnesota has a Training School for boys at Red Wing, and has established one for girls at Sauk Centre. Then there is the State Prison at Stillwater and the State Reformatory at St. Cloud. With the latter institution I am more familiar than with the others, and the rest of my remarks (after saying that there is no institution in the State for delinquent women) will relate largely to the State Reformatory.

It has been in operation twenty-one years, has received 2,650 inmates, has undergone many changes, and has shared in the remarkable penological advances of the times.

And now from the higher ground the possibilities of the future appear to disclose themselves to some extent.

The first and most important preliminary step toward efficiency was taken in this state some years ago, when its institutions were placed on a non-partisan basis, and the several executive heads were authorized to appoint and remove all members of the staff—all, including the superintendent, to be judged solely by the value of their service. The next step in importance is to secure a staff of the proper personnel. One serious obstacle stands in the way. The monetary compensation is limited, and the cost of living is high. A guard at the reformatory, if he has a family of average size, cannot expect to save anything from his earnings. There are no pensions. Men are needed who have some culture, who set a good example, and who have some executive force and ability, besides possessing many other good qualities. Such men, unengaged, appear to be few. Other lines of activity allure them, with better compensation and better prospects. When secured at the reformatory, they are likely to be found out by some other employer, and the less accomplished men are likely to remain. There are exceptions, of course.

The State service is a valuable and honorable service, and should be made attractive to valuable and honorable men.

When the reformatory was organized it was provided that commitments should be by means of the indeterminate sentence, with the maximum and minimum terms provided by law for the crimes for which the convictions were had.

Beyond the maximum a prisoner may not be detained. Within the minimum he may not be finally released. He may be paroled at any time in accordance with such rules as the Board may establish.

Later on the legislature provided for commitments

to the state prison on the reformatory plan, and that provision is still in effect, and largely resorted to. Before their final release prisoners are therefore usually tested on parole. This means that they must have employment to which they may address themselves immediately upon their leaving the institution, and that they should be visited and carefully supervised during the period of parole.

In my opinion this latter work has never been successfully done, and never could have been properly done with the force available for the purpose.

For many years there was only one person to do the work, and he had a multitude of other duties, sometimes requiring his frequent and continued absence from the state. The state agent now has an assistant, but the work of his office has increased, and the equipment of his office is altogether inadequate to the demands upon it. In this regard I feel certain that the state is penny wise and pound foolish.

The Adult probation law has very wisely been extended to the entire state. The natural consequence is that generally the most likely convicts will be put on probation. The average of the inmates received at the institutions will as naturally be lower in mental capacity and in social rectitude. Proportionately more of them will be strangers to the court from which they are received.

It is contemplated and presumed that the reformatory shall receive only first offenders in felony, who are reformable under the system in effect, and who are between sixteen and thirty years of age.

This is a violent presumption.

The courts do not know the past life of most of those upon whom they pass judgment, and do not know whether they are first offenders, reformable, and of suitable age, or not.

The officials of the institutions in which the prisoners are confined can later ascertain these facts, and, in cases of parole, do so before the paroles are authorized; but this subsequent work cannot affect the prior judgment of the court, which is often found to have been passed under serious misapprehension of the facts.

The only state prisoners who are now given fixed terms in Minnesota are found in the state prison at Stillwater, but as before stated, a considerable number of prisoners are received there on the reformatory or indeterminate plan.

A person who leaves a prison by expiration of sentence is ordinarily at a disadvantage, and while no definite statement can be made regarding the subsequent, careers of such prisoners, it is generally considered that most of them soon lapse into their old habits and ways.

At present it may be said that perhaps the least encouraging feature in the State's treatment of its prisoners is that it keeps together under the same regime, the bright and the dull, the sick and the well, the better and the worse.

This course lowers the tone of the institution, and causes every general agency for improvement to drag more or less.

It is true that persons convicted of, and imprisoned for felony, do not average as high as other persons. Among them are more feeble-minded, imbecilic, epileptic and insane persons, and others of arrested mental development, than would be found among an equal number of average citizens. It seems to be true that thirty to forty per cent, at least, of our adult prisoners are of inferior mentality. Some of them may be improved, some may be even cured of their handicap, but it is true that very many of them are not capable of improvement, while many others will certainly progressively retrograde.

Under our reformatory system, as well as under the fixed sentence plan, all of them (except life prisoners) will eventually be set at full liberty, unless they die before the time comes for their liberation.

Here is the regard in which the State is at fault, to the serious disadvantage of its people.

If a man is rightly in prison, he should not regain his liberty until the reason for his imprisonment no longer exists.

It is an error to believe that because a prisoner has been detained for a certain length of time, he has so changed that his future course will be different from what his past has been.

Imprisonment *per se* is not good for any one. It is what is done, or attempted to be done, with and for him, while he is a prisoner, that justifies his detention, except in the case of the numerous individuals for whose rehabitation there is scant reason to hope, and for whom the wisest man can only prescribe indefinite custodial care. For them there should be established a separate institution in this State. In similar manner should be kept another class of prisoners who are not so well understood. I refer to the prisoners who seem to have a normal endowment of body and mind, but who, because of some special or symmetrical perversion persist in antisocial courses whenever they have their liberty. Call them recidivists, repeaters, habitual criminals, or what you will, we do not understand them any more than to know that they are enemies of morality, and active opponents of law and order.

They have never been successfully dealt with.

It is possible to save the youth from the contaminating influence of their association, and it is possible to save the property owner from their depredations, but these things have not been done.

They can be made practically self supporting in confinement.

Another class of prisoners, (who have not yet been referred to) are the misdemeanants. They are much more numerous than the felons. From them the felons are largely recruited.

They are usually set at liberty with a lecture or warning, subjected to a money fine, imprisoned in jail, or committed to a workhouse.

Persons held awaiting trial, because unable to furnish bail, are usually confined in jails with convicted prisoners, and subjected to the same treatment. This surely seems not to be right.

The foreign delegates to the International Prison Congress recently held in the city of Washington, commented frankly and unfavorably on our treatment of misdemeanants, and persons held for trial, and we were obliged to acknowledge the justice of their criticism.

The jail problem is still unsolved.

I do not understand that I am expected to deal with this branch of an important subject, but I commend it to your consideration.

ADULT PROBATION

By J. W. Bennett

"Am I my brother's keeper?"

This question asked by that traditional man-slayer in the dim ages long ago has finally been answered in the affirmative.

In all the years of the bloody past society has been inclined to answer this question as the primitive fratricide answered it. To pleas for mercy and help it has returned the answer in acts if not in words, "Am I my brother's keeper?"

Growing civilization is modifying this view. In this twentieth century of progress to the old question society is more inclined to respond, "I am my brother's keeper." It must take this view to protect itself.

Society like the individual is one. It is an organic entity. Neither the arm nor the limb, nor the hand nor the foot of the individual may be permitted to go down to disease and death, without jeopardizing the individual himself. So no member of society may be permitted to go down to disease and death morally or physically without reacting upon the society of which he is a member.

This is the great truth which the world seems reluctant to accept. Sages and seers saw it centuries ago, but the average mortal is but now beginning to recognize it. This has come like all other vital truth, almost instinctively, rather than by any process of reasoning. The recognition of this truth by a people is an index to its place in modern civilization, just as its denial is an index of essential barbarism, the view of Cain.

In our treatment of society's delinquents we are tardily beginning to recognize this truth. You will remember that although Cain killed his brother, he was permitted to go free. God placed a mark upon him, lest men should slay him. For weary centuries we have been branding, and ostracizing and torturing and imprisoning Cain's descendants, large and small. We have been obsessed with the idea of PUNISHING crime not curing it. It would be almost as rational to punish insanity. We have tried to torture, and imprison and hang virtue into our delinquents, "since man first penned his fellow men like brutes within an iron den."

Now we are learning better and one of the strongest evidences that we are learning better is the attitude of courts as exemplified in our probation systems of dealing with delinquents, especially, the crowning service of adult probation.

For years our more intelligent and humane judges have doubted the efficacy of the judicial kick into the steel-barred cell as a means of dealing with society's delinquents. The development of more humane and intelligent sentiment, and methods is a long story and I shall confine myself to the problem at home, referring incidentally to the work elsewhere as a means of illustration.

Bound up in the precedents of centuries, these liberal judges, found themselves in a difficult situation. Their former connection with offenders was to prepare for the execution and participate in the probate of the will. But they were lawyers, fortunately, as well as judges. When they concluded that it was necessary to meet the situation differently, they found a way. Judge Waite, of the Minneapolis municipal court, Judges Finehout and Hanft of the St. Paul municipal court, Judge Ensign of the St. Louis county District Court, and

no doubt many other Minnesota judges, adopted systems of their own for handling delinquents.

In St. Paul the device was the continuing of the case, after it had been fully investigated and the judge had satisfied himself as to the guilt or innocence of the accused. The delinquent was given his freedom on probation for a period to give him an opportunity to escape degrading imprisonment. If he backslided he was warned that he would be brought in, sentenced and sent to the workhouse. If he had made good at the end of the period to which the case was continued, the judge would dismiss the case. St. Paul municipal court judges have used this system with surprisingly good results for several years.

Judge Hanft is not sure that it was not the best sort of probation system to meet the needs of his court. I shall try to revert to this later.

On the other hand, Judge Waite in the Minneapolis municipal court, met the situation by trying and sentencing the accused, if found guilty, then suspending sentence for a definite time. In the meantime the delinquent was on probation. This is also the system which I am informed has been used successfully for fifteen years by Judge Ensign of St. Louis county.

In order to perfect his own system and that of his colleagues on the municipal court bench of Minneapolis, Judge Waite was recently instrumental in having a law passed giving the court specifically what the judges had practiced under their "common law" powers. By this law which is an amendment to the municipal court act of Minneapolis, a special act, the judges are given full power to place delinquent adults on probation or virtually to parole them after sentence is pronounced, and as I understand it, even after a portion of the sentence has been served.

Some question has been raised as to the validity or

the wisdom of this law. It might be mischievous in the hands of a judge less devoted than Judge Waite. Needless to say, it has not been abused in his hands.

These lawyer's devices of meeting the situation did not satisfy Judge Finehout altogether. He had been following the work of Judge Cleland in Chicago, and was impressed with its success. Illinois had the best probation law then in force in any state. Judge Cleland was induced to come to St. Paul. He told the men of the Park church what adult probation was accomplishing in his court. So good did the gospel sound that an organization was formed embracing the Twin Cities and Duluth to push along the cause. Judge Finehout, Judge Waite and Assistant Attorney General Peterson were appointed a committee to draw an adult probation law to be presented to the legislature then in session. The laws of many states were studied, including those of Massachusetts, which had had probation laws since 1878. They were found complicated. Mr. Peterson prepared a law which was simple, as Judge Waite recently remarked, "almost to crudity." This law was offered to the legislature and pushed through. It is known as Chapter 391 of the general laws of 1909, approved April 22, 1909, and provides in substance:

First. The courts of record shall have power after the imposition of sentence against any person convicted of having violated a municipal ordinance or by-law, or of any crime for which the maximum penalty provided by law does not exceed imprisonment in the states prison for five years, to stay the execution of the sentence when the court is satisfied that the welfare of society does not require that the accused shall suffer the penalty imposed by law for such offense, so long as he shall thereafter be of good behavior.

Second. The stay must originally be for a definite time. During this time the person so sentenced may

be placed upon probation to the probation officer, where one is available, and to a discreet person where there is no probation officer. The probation officer must report to the court. It is permitted that a sheriff, constable or police officer may be given charge of offenders on probation. The court may impose and enforce conditions of probation. He may require recognizance or other surety. At the end of the original term the court may extend the probation term for additional definite periods, not however, aggregating more than one year, unless the crime for which the delinquent is sentenced carries a maximum penalty of more than one year. In any event the period of probation must not exceed a year or the time of maximum sentence which may be imposed for the offense.

Third. At any time before an indefinite suspension of sentence and discharge of the prisoner, the court may revoke the order staying sentence, and may have the sentence executed. In the order the court must give the reasons for its action. Then the sentence will be executed as though no probation proceedings had been taken.

In other words the delinquent is placed in the custody of the court and the court is given power to help him and to keep him out of prison.

Machinery for the application of this law was right at hand. It was not perfect, but it was sufficient with which to make a start. While the law applies to the whole state, probation officers have been provided in the three leading cities only, the Twin Cities and Duluth. In all three of these places the adult probation law was put in immediate working order.

The first cases under the law in St. Paul came in early May, less than a month after the law had been approved by the governor. A probation officer for juveniles was already an officer of the court. To him were sent the adults placed on probation. Up to that time

some had been sent to him by judicial devices and some had been looked after by the judges themselves. Judge Orr of the Ramsey county District Court tells me that in many cases the judge can do more effective work with a probationer by having the probationer report directly to him. In that way a more intimate relation is established between the court and the delinquent. The judge is given an opportunity to impress upon the delinquent ideals of conduct. As soon as one can get a delinquent to understand and pursue an ideal, he is on the road to reclamation.

Three classes of delinquents are dealt with under the probation laws now in force in this state, two under the law of 1909, the adult probation act. The juvenile probation law applies to all delinquents under 17 years of age. There is a younger class, those from 17 to 21, dealt with under the adult probation law. Then there is the class without age limit. In St. Paul I found a man of 61 years on probation. In Minneapolis, they have a probationer of 69 years.

The report of Probation Officer A. T. Graves of St. Paul for the year ending June 30, 1910, shows that at the beginning of the year 85 persons between 17 and 21 were on probation; 130 of this class had been placed on probation at the beginning of the year; 170 had been discharged; in two cases the order of probation was revoked; but 43 remained on probation at the end of the year. Before the court for the year were 593 persons between 17 and 21 years. Roughly speaking, twenty per cent of the class were made probationers. A study of the St. Paul records since the annual report, shows about thirty additional in this class.

Offenses committed by these younger delinquents were of many kinds. Thirty-seven different offenses are listed in the tables of the report. Assault and battery cases number 12; drunkenness 61; loitering 20; grand

larceny 13; burglary 4; disorderly conduct 100; vagrancy, 50. These make up the bulk of the offenses. The great majority are minor failings, although some are very serious. There are twelve cases of forgery on the list, a delinquency especially difficult to cure.

In the same year the municipal court of St. Paul placed upon probation 52 cases of adults over 21 years. Thirty-five were discharged within the year, and but one of the whole fifty-two violated his probation so as to bring upon himself the sentence. Sixteen of this class remained on probation at the end of the year.

From the Ramsey county district court in the same year, came 25 probationers, of whom one was recalled to serve his sentence and 24 remained on probation at the end of the year. In this court the offenses dealt with were more serious and the terms of probation longer under the law. Among the offenses were 14 cases of grand larceny, 3 of forgery and 4 of burglary. With such serious cases the showing is truly remarkable.

Of the 83 cases placed on probation in St. Paul since the report, 28 were of persons over 25 and 29 of persons under 21 years of age. Nine were between the ages of 21 and 25. The class of offenses were about the same as shown in the report.

Of the cases placed on probation in St. Paul in the last four or five months, I find about 20 per cent. women. Their cases are less varied than those of the men, being largely confined to drunkenness and disorderly conduct. One woman who had been convicted of forgery was placed upon probation. Most of the women offenders were younger women, although several were matrons of middle age.

Probation Officer Graves and his assistants have added the adult classes to their already heavy charges. Adults and children alike report at the probation office. Usually Saturday afternoons are set apart for adults who

are employed. Mr. Graves keeps a very full record of delinquents under his charge. It makes up an interesting and hopeful, if somewhat distressing page in the history of correctional effort.

A husband convicted of non-support is obliged to pay a fixed sum each week into court or to the probation officers for the support of the family theretofore neglected. A man convicted of larceny is permitted to make restitution in monthly payments. Work is found for this man who is almost ready to acknowledge defeat in the battle of life. He has found a friend upon whom he can lean. There is also an employer who will give him an opportunity to make good as long as there is a ray of hope. The young girl is picked up and helped along the upward path. Unfortunately this is the exception. Judges close to the situation, as well as probation officers, tell me that men are ready to drag erring women down and women are slow to help them. This is the most difficult problem facing workers in this field.

Judges Hanft and Finehout tell me that about 350 persons above 17 are now on probation from the St. Paul municipal court. There are but eight backsliders in Judge Hanft's list of 168. He has 24 more whose terms of probation he has increased. They were not quite satisfactory. Judge Hanft is looking after some of these probationers personally, and he has succeeded in interesting a number of employers, so that places of employment are found for those who will work.

Judge Finehout has a list of about the same size. He says that 92 per cent. of his probationers are making good. Both judges are enthusiastic in their support of the principle of probation, as a correctional method. But one danger of abuse has arisen. External pressure for suspended sentence is making itself felt. Judges are not permitted to use untrammeled judgment in selecting probationers. Influential friends seek suspension of sentences

sition is given every opportunity to keep out of prison.

Probation Officer George A. Copeland gives personal attention to probationers between the ages of 17 and 21 sent him by the district court of Hennepin county and the municipal court of Minneapolis. His report for the year 1909 shows that 104 of this class were on probation at the beginning of the year, 95 were placed on probation in the course of the year, and 100 were discharged. In thirteen cases the probation was revoked and the sentences executed. At the end of the year there were 87 on probation. There had been 585 cases in court, so that roughly speaking about 16 per cent. of this class were placed on probation in the course of the year. Others were dismissed, sentenced to the workhouse or county jail or to pay fines.

In the course of the same year 11 adults, over 21 years of age, were placed on probation by the judges of the district court. Nine of these had been convicted of grand larceny, one was a forger and one was guilty of unlawful entry. The younger class of probationers had been convicted of twelve different classes of crime. Two had committed burglary; 9 disorderly conduct; 26 drunkenness; 11 grand larceny; 17 petit larceny; 3 forgery; 6 trespass and 6 vagrancy. Women offenders made up about 12 per cent. of the Minneapolis delinquents. They were largely of the disorderly or vagrant class.

Much more serious offenders come from the district court in Minneapolis to the probation officer. Up to date 25 persons convicted of grand larceny, 8 forgers and 7 burglars appear on the lists. A study of 45 of these cases showed 29 above 25 years of age and sixteen below 25 years. More than half the number were first offenders, drawing reformatory sentences. Many were sentenced to the state's prison, for terms running two years or more. In one case a sentence of eight years in the state's prison stands against a probationer, a sentence putting

him out of the class of probationers under the law. But four had their probation revoked.

Mr. Copeland tells me he regards the working of the law as highly satisfactory. He has the probationers report to him periodically, and has other means of checking them up and keeping track of them. The benefit to be derived from the system in his opinion depends upon the care with which the probationers are selected among offenders, and the care with which they are watched and helped during probation. Some few have been placed upon probation where Mr. Copeland was doubtful as to whether they were proper subjects. Careful administration usually detects this class. Personality of judge and probation officer is a most important element.

When necessary, probationers are permitted to leave the city or even the state. Often they report by letter. Friends or pastors, or relatives are often asked to keep the probation officer informed as to them. Some of the probationers do well while under surveillance, but backslide when the term is ended. Occasionally a probationer comes back and asks for the extension of his term. He feels that he needs the help.

Whenever practicable, Judge Waite requires probationers to make restitution. Other judges follow the same system. They consider this an important thing for the probationer as well as for the injured person, for in nearly all cases of crime there is a private as well as a public wrong. In cases of non-support where drunkenness is the cause of the delinquency, the wages of the delinquent often passes through hands other than those of the husband so as to be certain to reach the family. All in all, the courts of the Twin Cities have taken on a heavy burden of responsibility for the sake of getting the most out of the probation idea.

Nineteen persons have been placed on probation by the district court of St. Louis county. None have come

from the municipal court of Duluth to the county probation officer. All nineteen of these delinquents have been convicted of felony. Two of the nineteen have defaulted and their probations have been revoked. The probation officer of St. Louis county, Mr. F. E. Resche, considers the law successful. He approves the application of the probation idea to adults.

Outside of the three large counties of the state, the probation system, I am informed, is in occasional use. Facilities in the more thinly populated counties are poor for the carrying out of the law. There are no probation officers, and the delinquents must be looked after by volunteers. About 25 cases are reported from these counties.

Courts under the law are given power to impose conditions of probation. These are merely rules of clean and sane living, such as keeping away from bad company, keeping out of saloons, spending nights at home, etc. The rules are easily carried out by persons who wish to lead better lives. These are the facts in some detail as to adult probation in Minnesota. One may draw his own conclusions. I am going to draw my own if only for mental exercise.

About fifteen states have some sort of probation laws. Massachusetts was a pioneer, passing a law of that kind in 1878. Its present law has been in force nearly twenty years. Yet Massachusetts has not proceeded so far in adult probation as has Minnesota.

New York has had an adult probation law for about ten years, and it has had the subject handled by commissions. There is controversy there as to details of the law. Maryland was one of the early probation states. Illinois has the most advanced system of any state except our own, with which I am acquainted.

Judge Jeff Pollard of St. Louis for years practiced a probation system of his own with drunkards. He made

them sign a pledge for a year and turned them loose to try to keep it. His system justified itself.

Judge Cleland of Chicago has probably handled a greater number of probationers than any judge on the bench. He is especially enthusiastic as to its superiority over the fine and imprisonment method. Judge Cleland tells of an Italian who was given a workhouse sentence for violation of the compulsory education law. He went to that man's home and found his family living upon bread without butter and upon black coffee. The man was served with hot meats. Out of 7,000 coming cases under his observation 2,700 delinquents were compelled to serve sentences of 14 to 27 days to work out fines of $5. Families or dependents in the meantime suffered. Four thousand persons had sentences repeated from 26 to 210 times. The 209 times did not cure, as the judge remarked, still they did not see the fatuity of giving the 210th.

Judge Cleland reports 92 per cent. of the probationers as making good. That is a high percentage. A worker among women probationers in New York reports two-thirds as keeping their probation and one-third as permanently benefited. That is a low percentage. There is some difference of opinion as to the best method of applying adult probation, but none as to the correctness of the principle, among persons in position to know.

Adult probation seems to have been intended originally for first offenders, and is limited by the laws of some states to this class. Liberal judges in Minnesota make the widest possible use of it. They feel that the power is given them as an instrument with which to save delinquents, and they apply it wherever they feel that it will give beneficial results.

The Minnesota law is permissive. That is its strong point. It gives the judge wide latitude to do the best he can for the offender.

In a recent paper upon the subject Judge Waite of Minneapolis gave a summary of the benefits to be derived from adult probation.

First he said probationers have a strong incentive to lead better lives, for they know that a lapse will bring certain punishment. There is none of the uncertainty surrounding a trial yet to come.

Second. The surveillance of the probation officer helps the delinquent to stand up, and it warns him that any lapse upon his part will be detected and punished.

Third. Probation saves the delinquent from the loss of self-respect due to penal confinement, and from the contaminating influences of prison life, influences tending to make him a confirmed criminal.

Fourth. The probationer has the discipline of right living under normal conditions, rather than the abnormal life of the prison.

Fifth. The probationer may make restitution, a thing of importance to him and to the injured person.

Sixth. Probation has economic advantages. It makes the probationer a producer rather than a burden upon society, and preserves his producing efficiency. He is able to take care of those depending upon him.

This is an excellent summary of its advantages. The only drawbacks now in sight are the possibility of undue influence and pressure upon judges to use the power unjustly, and the possibility that it may weaken the incentive to good conduct by removal of the fear of punishment. The first danger is a real danger, but is doubtful if judges will let free any person really dangerous to the community, however strong the pressure. To the second it is enough to answer, that the fear of fines and imprisonment does not seem to deter persons now from committing crime.

It may as well be recognized that the system of

fines and imprisonment, and death as means of dealing with criminals have utterly failed to eradicate if not to check crime. Society continues to use the system because it has known no other. Possibly a better day is now dawning. Certain it is that the system of fines is wholly unjust and ineffective, falling most heavily, as a rule, upon innocent dependents. Fining and imprisoning bread-winners of families always put to it to live, seems such an insane system of procedure, as to be incredible if it were not so tangible and real.

Adult probation promises much because it is an attempt to apply a great truth, the truth that society and its members must stand or fall together. It is an attempt to get away from the idea of PUNISHMENT for delinquencies, and substitute the idea of cure. The thing to be accomplished in every case is not vengeance, but the protection of society, and it is found that society can be best protected by protecting the individual.

Crime and disease are, speaking generally, analogous and should have analogous methods of treatment. When a person shows slight symptom of an infectious disease, a wise health officer does not rush him off to the pest house where he is sure to get it. Yet this is just what we do or have been doing with a man or a woman showing symptoms of criminality. A wise judge remarked to me in discussing this problem, that no judge could tell by a single criminal act the attitude of mind of the individual comitting it, or how he should be treated. In other words one act does not tell whether the delinquent has the disease which makes him a hopeless criminal.

Rather extensive experience with the higher class of criminals, the embezzlers and trust violators met in investigation of fidelity cases, leads me to agree with that judge, and with Judge Waite, who expressed the same opinion here last night. I have found that a change in

stock market; a pinching out of an ore vein in a favorite mine; tardy information that the Florida or Oregon fruit ranch prospectus, or the rubber or coffee proposition from Mexico or South America was not just what it seemed, just one of these little things changed almost over night, a respected and influential citizen and church-worker, a man with full public confidence, altogether good, into a felon facing the state's prison. It convinced me that either many of our good and influential citizens are undetected criminals, or many branded criminals are not criminals at heart. Sometimes very good citizens, a little greedier than the victim, and more cunning and more powerful, are the cause of his falling from grace. They concluded that his fortune and the trust property in his hands might make a juicy morsel to add to their plenty, legally, of course, and therefore quite properly.

As a consequence where there is this doubt he should be placed under observation, just as one suspected of having an infectious disease. If he has it, he must be dealt with accordingly, but the officers of the law must be sure he has it. It may be necessary to quarantine him, so that he may not spread the contagion. It may be necessary to isolate him permanently as one might a leper, or other incurable with a disease dangerous to other men and women. But it is never necessary to punish him, for it is always useless to do so.

If his offenses are minor, if his disease is not infections, he may best be permitted in God's sunlight and pure air where his malady may be cured. A little judicious treatment is all that is required. Certainly society has nothing to gain by sending men and women to prisons until their failings have become a veritable moral leprosy and then turning them loose upon the community to infect everybody with whom they come

in contact. Yet that has been the prevailing method of dealing with criminals in the past.

Society has taken pains to make enemies for itself in its own ranks. The individual sentenced to prison, if there is any injustice in the sentence, has a rankling hate in his bosom which flares out at the first opportunity and is not discriminating in choosing the person upon whom to wreak revenge. Thousands are in this way made enemies of society, a constant menace, a constant force of disintegration.

On the other hand there is that in human nature which responds to sympathy and help. The weakest individual before he has become a confirmed offender must respond to the judge and the probation officer who patiently and devotedly try to help him. Under the probation law we shall have a corps of the most intelligent and devoted men in the community laboring for the curing or the mitigation of crime, rather than wreaking vengeance upon criminals. It cannot fail in time to produce results of tremendous importance.

We cannot expect adult probation to eliminate crime. The roots of crime have driven deep into the soil of our civilization, as deep as the roots of injustice and ignorance. But adult probation can and will mitigate it. Already the parole officers of the state tell me that the work done in the juvenile courts and by probation officers is diminishing the number going to the state penal and reformatory institutions.

To return again to the analogy between crime and sanitation, if the wise sanitary officer is asked to rid a place of infection, he sees that the streets are clean, the water supply made wholesome, the food supply is made clean, housing conditions are improved; he sees that the threatened individuals are well nourished, and are put in position to live wholesome lives under sanitary conditions. In the meantime he may find it necessary

to isolate or to quarantine certain individuals suspected of being infected, and to keep others under observation. He may be required to give some special and heroic treatment, even to send some to the pesthouse. But he never expects to remove the danger until he has made the place sanitary, the living conditions right.

The same is true of moral sanitation. If we wish to eliminate crime, we must clean up morally and maintain a sane and healthy moral atmosphere. We must eliminate the social injustices in which this moral disease germ breeds. Just as perfect sanitation and the elimination of all disease cannot be looked for at this age of the world, so we cannot look for perfect moral sanitation. But there is nothing to prevent us treating moral disease intelligently, as we treat physical disease. One of the most striking moves in that direction is the adult probation system. It promises great good.

And one of the most promising features of adult probation is the changed attitude of the courts toward the delinquent.

SIGNIFICANT FIGURES FROM THE JUVENILE COURT OF HENNEPIN COUNTY

By KATE TALBOT FINKLE

One of the dominant notes of the thinking public today is conservation. The Juvenile Court stands for child conservation and following by natural transition we have citizen conservation. The Court aims to discover the causes of youthful delinquency, and to remove these causes whenever possible. A Probation Officer receiving the child after its court hearing becomes the red flag of warning to parents, schools, to all agencies, in fact, which deal with and care for the well being of the child. On the probation system, then, rests the ultimate efficiency of the Juvenile Court movement. The key note of an efficient probation system is co-operation, co-operation with the parent, the entire school system, (principals, teachers, truant officers,) the church, the relief societies and visiting nurses, the social settlements, the police and the general public. Before effecting a cure, the root of a trouble must always be ascertained. My object this morning is to show that behind every first offense is a contributory cause, pushing the child from without its own nature, and that these causes fall into two large general classes. Then throughout this talk I hope, by citing individual examples, to explain how the probation system deals with these cases, utilizing, centralizing for co-operation all the agencies above mentioned. I shall also show our methods of preventive work, the benefits of probation as

proved by a few figures, and close with suggestions for the betterment of the system.

Now it will easily be granted me that in dealing with children, first offenders are never criminals. In childhood we are dealing with plastic material; it is for the adult in charge to mould as he will. But unless checked, first offenses repeat themselves—that which was a mere tendency becomes a fixed habit of wrong doing, which in time hardens into criminal life. "One-half the criminal inmates of prisons and institutions are from the youth of the nation, who through bad habits formed between the ages of eight and sixteen later arrive at prison." (New England Mag., Vol. 32.) The average age of our boys on probation is thirteen years. According to the above statement we get them none too soon. But what plunges them into this all-important first offense? Observation in my work has taught me that, almost without exception, the fault lies in the home. This natural defense that society has reared around its immature members is weak in some vital point or points. I have divided these weak homes, those that fail to sufficiently protect the child, into two classes:

First, the home abnormal in its construction of family life.

Second, the home abnormal or subnormal in parental control.

I further divide the abnormal home into the following classes:

I.
- *1st.* The deficient home, in which one or both parents are dead, insane or divorced.
- *2nd.* The half home, in which both parents work, or where the father is absent from town a large part of the time.
- *3rd.* The home where poverty crowds.
- *4th.* The vicious home, in which there is drink, immorality, or where the parents have served or are serving workhouse sentences.

II.
- *1st.* The home where parental control is weak, through lack of will power.
- *2nd.* The home where parents are too indulgent.

With this outline of family construction in mind I carefully examined the History Sheets of all cases coming into our Court for the two years beginning July, 1908, ending July 1910. Out of the 1,070 cases, 126 in which the family construction was perfect were dismissed after trial. 416 of the families, or 39 per cent of the total, were not normally constituted—that is either the father or mother, or both, had died, or were insane, or the father and mother were divorced or separated. Thus, the strongest safeguard of childhood against temptation was removed. In cases of this sort we often find it helpful to consult the Associated Charities. Here is a good example: For years the Society had been pensioning a sickly woman whose husband had deserted her and their two small sons. On the surface it appeared to be a most pathetic case. In time one of the boys, an undersized, white-faced child, was brought into the Juvenile Court for petit larceny. By consulting the lengthy record which the Charities had kept since first receiving the family, we learned that the woman was a weak character, suspected of immorality, of lying, and given to bursts of temper. She was constantly in need of aid. Now, the question we ask in each new case is: "If left in the home will the child receive corrective help and moral stamina to back the work of the probation system?" In this instance probation was tentatively tried, but the boy continued stealing. On the strength of the family history as reported by the Charities, it was decided to send the boy at once to the Training School, where health, moral training and a trade would be supplied him.

Further examination of those 1,070 History Sheets showed that 63 of the families had drunkenness to excess in the home, either the father or mother, or both, drinking. Perhaps I ought to explain that in many of these families desertion, drink and insanity are all found, in fact, the whole gamut of abnormality is run.

per cent I have allowed each family but one count. On further reading of these 1,070 files I found that 32 fathers of families otherwise all right were absent from home for long periods at a time, 21 of them being railroad men and 11 traveling men. Some of these cases were especially serious. The mother loses control of the boy; she dislikes to complain on the rare occasions when the father is at home. I have such a case on probation now. This case is interesting also in that it shows the difficulty of securing results without parental co-operation. The boy was thirteen years old when first brought in on the charge of killing a neighbor's chickens and stealing from the wagons of fruit peddlers. The boy's mother was intense in her anger when the case was tried in Court. When I reported the boy's neighborhood reputation as "bad" and proved the same, she publicly denounced me as a liar. Now she *knew* that her boy was not doing right. He frequently swore in her presence, refusing to help with the chores. His school record was bad; many complaints came to her from the neighbors, and he was usually out after nine in the evening. The probation of that boy was unsuccessful except in improving his scholarship. Each child on probation is required to bring a school report fortnightly to the office. We necessarily insist that this record be as perfect as the child's mentality will allow. Another rule requires that the probationer be indoors by 9 p. m. We must have the parents' co-operation in enforcing this rule, since it is impossible for four officers to see that four hundred juveniles are tucked in bed by nine each night. Now in the case of our little chicken thief, we learned that he was often out after nine; but his mother always supplied an alibi, thus blocking us. Within a year the boy was brought before the Court and new charges proved. I took occasion to have a long talk with the father, who happened to be in town at the

time. He was a man of somewhat different mould from the mother, and took alarm. He gave up his railroad position, secured a situation in town, and promised me to watch the boy closely. This co-operation came a little late; again I was obliged to have the boy brought in, and to the astonished parents proved that their son had been engaged in petty thefts amounting to over one hundred dollars. The boy is now fifteen, third year in the high school, and planning to take the Law Course at the University. Upon the father's earnest plea we gave the boy another chance. I feel that that case is at last started on the right road.

To go back to our 1,070 cases, I found 31 families where parents were either mentally or physically disabled. For instance, 12 of the mothers were either simple or feeble minded,—another example of weakened protection as bad in its ultimate effect as actual death. Adding the families with drunkenness physical and mental disability to the original 39 per cent, our total of families abnormal in construction becomes 51 per cent. In the majority of homes included above poverty is more or less evident. We have one case of an incorrigible girl who comes from a home of three rooms, occupied by a family of ten. The father drinks, and periodically deserts the home; the mother has an ungovernable temper, and the family as a whole is partially supported by charity. In this instance we removed the girl from her crowded home, supplied her with suitable clothes through the Sunshine Society, and placed her in a good home where she had the care of several small children in return for which she was given room and board and allowed to attend school. When at home she had played truant twenty days in one term and was doing poorly in her work. Under our care she attended school regularly and in six months graduated from the grade schools. She came to me with a great many questions that

showed a fundamental lack of home training and among other things was persuaded to take my word as to the unsuitability of false hair and face powder for a girl of fourteen. A married brother in Dakota began to take an interest in her and finally sent for her to make her home with his wife and himself where she is now doing well.

In many of these homes the parents have served workhouse sentences. Some of the mothers are notably immoral; others are thriftless, and their housekeeping a pandemonium of dirt and disorder. As a general summary of this class of homes, let me read you a few characterizations taken at random from these History Sheets, which are written by the officer in whose district the case falls, and summarize the field work done.

Father and mother living together.

Father drinks; mother works; home dirty.

Father and mother living together; both drink; mother immoral.

Father dead; mother with six children, two illegitimate. Mother works. Home consists of three rooms in a cellar.

Father deserted the family; mother keeping a disorderly house.

Parents separated; girl stage crazy.

Father insane for last 15 years; 4 children under 14 years; mother supports family with day work.

We now come to consideration of the remaining 49 per cent of our 1,070 families. In these homes I believe the initial delinquency of the child to be due to a lack of proper control, or too great indulgence on the part of the parents. In 16 of these homes both parents work; in such cases the father is usually a laboring man, and the mother does day or laundry work. They leave the home early in the morning, returning at 6 or 7 in the evening, tired out, to find household tasks demanding

their attention. In the meantime the children roam the streets after school hours, get their meals as best they can, and become accustomed to lack of discipline and home care generally. Naturally mischief is waiting around the corner for these children. I have such a case in which the difficulty has been partially overcome. Two boys are on probation for burglary. They entered a store and stole ten dollars worth of pocket knives from a show case in one of their idle moments. The mother, who is exceptionally well and strong, keeps a small rooming house, and during the day does laundry work. She is buying their home, having already paid twenty-one hundred dollars on the thirty-five hundred dollar debt. The boys are proud of this, and anxious to clear their home; so we have encouraged them to secure positions outside of school hours, and they are now earning three and four dollars a week, which is handed over to the mother. Probation has also checked their inclination toward truancy. Each school slip shows us any absences and these have to be so rigidly explained away that the boys prefer staying in school to taking any chances.

Another condition that tends to weaken discipline in this latter class is the parents' inability to speak English. A large proportion of our children have parents of foreign birth. These parents fail to realize the perils of city life for the child; the child comes to feel that its people are ignorant and incapable of giving competent advice; so takes matters into his own hands. Many of these cases come from the Northeast section of town, where live the Russian, Slavic and Polish immigrants. It is a noticeable fact that the Russian peasants acquire our language much more slowly than either the Slavs or Poles. The dense and superstitious ignorance of these parents makes successful probation a difficult matter. In certain instances notably the grain cases, which I will discuss in detail later, the parents have

been known to urge the child on probation to commit further thefts.

In 24 per cent of the families under consideration one or both of the parents frankly admit that their child is beyond home control. The other day I took the court card of an undersized nine year old, who admitted that he smoked cigarettes and chewed tobacco every day. His father stood near, a broad shouldered healthy man. I looked at him in astonishment. "Do you know that your boy smokes and chews?" Yes, he answered in a helpless way. "I have advised him against it, but he pays no attention to me." That man had no control over his boy, and no control means weak will. I quote from Morrison: "Incapacity to control the child denotes by the law of heredity weakness of will in the parents, which reappears in the child in the form of an *absence of power* to resist criminal instincts and impulses." Now our business is to reinforce the parental authority, to stand in loco parentis as it were to the child. Sometimes the power we have over the boy is just enough to help out the parent; especially is this true when the case is that of widow and son. We often continue probation at the request of these mothers and have even placed younger sons on probation 'by request'. "Please keep Thomas on a while longer," such a one will say. "He is always in at nine o'clock because he is so afraid of getting into more trouble; and he's doing fine. I get his wages every week." *That* mother comes to us at the first hint of anything going wrong. If Tom loses his job she notifies us. If perchance, he stays out late, or starts in smoking again, she does the same. This kind of mother will always end by saying "Now don't tell him I told." And we do not; but Thomas has his misdeeds placed before him, and comes to view us as omniscient.

Now let me describe a case showing too much par-

ental indulgence. The majority of our Lowry Hill and Kenwood Parkway cases come under this heading. A typical high school lad was brought into court for stealing cushions and paddles from the lake lockers. One of the detectives on the police force, having been called to the high school to investigate book thefts surprised a confession from this boy as to his guilt. The detectives called up our office and on learning that the boy was on probation turned the case and evidence over to us to treat as we thought best. Right here I wish to say that the co-operation of the Minneapolis Police with the Probation Office is an unending source of help. It is, perhaps, one of the best examples of such co-operation in the country. The police of other cities, as a rule, regard the Juvenile Court as an impossible institution, through incapacity to grasp its essential principles. I wish I could stop to tell you of the officers on the beat, how often they watch our probationers, and report defects and improvements to us; but I must continue my tale of the high school boy who was too well off, and did not know it. We sent for the father and discovered that his wife had kept him in perfect ignorance of their son's probation. He immediately admitted that his boy was out until eleven and twelve o'clock, saying that his wife wanted their son to have as good a time as the other boys. The motive for the thefts was easily explained. Our boy received one dollar a week pocket money, and was associationg with lads who received from five to ten times as much. In this instance the father asked that we suspend sentience until he himself had tried his hand. His measures were drastic, and we are somewhat in doubt as to what the results will be. That boy was taken out of high school, put into overalls, and placed at work. We have this same trouble of too much parental indulgence among the poorer classes as well. Idleness causes the mischief here. In our con-

gested districts where families are herded by the dozens, many of the children are allowed to run the streets after school hours. A group of boys gather together looking for some fun. Each picks up a smooth stone, a natural and automatic action to boyhood at large. What to aim at, the dog, the cat? No; for the animal stories at school have done their noble work. Ah! An empty window with some dirty cobwebby panes of glass. Two of the panes are broken anyway. Bang! there comes the delicious clink and shiver of broken glass. Later the Juvenile Court gets those boys for malicious destruction of property. I call your attention to this map of all cases on probation in 1906, when our Court was very new. Note the number of disorderly cases, window smashing, stoning of Jews, tearing up of flower beds, breaking open mail boxes and the like. Do you see any parks here or here? The school playgrounds, even are very meagre. Take the Grant, the Sumner, the Logan.

Think of turning children loose for hours of the day into such neighborhoods, and expecting nothing to happen! When these boys grow older the parents sometimes come to us and complain. "My boy won't go to school, and he won't work, not even around the house. There is wood to split, and we keep a cow, but he won't turn his hand over." Ask that parent if the boy has *ever* had any fixed tasks about the home. "Oh, no. He was getting his growth, and boys will be boys. I'm sure he has been well treated." We bring the boy in for incorrigibility, find him a position, and insist on his getting to work and turning in his wages at home. In all probability he loses his place five or six times before he is trained enough in habits of industry to hold anything. But finally he manages to keep a place several months. His sullenness wears off, there is an immense improvement in the lad's bearing, and all is well.

In concluding the study of this 49 per cent of

cases, I found a final class of children, who fall slightly without any of the classifications given. Still these children are not directly blameable for their misconduct. I refer to those deficient in physical and mental well being. A number of our probationers are pale and undersized. In my own district at the present time I have 84 cases on probation; five of these are decidedly deficient in mentality; two are simple minded. Sometimes all persons concerned are in ignorance of the true state of affairs. Let me give a concrete illustration of how we ultilize medical aid. One of my boys came in on the serious charge of forging a check. On consulting his school principal I found that six whippings a week had no effect on his lawlessness. His conduct in the ungraded school was much the same, and he played truant whenever possible. On talking with the boy I was struck by the peculiar way in which he held his head. I asked the principal and teacher if they had ever suspected any mental disturbance; but they said no; the boy was bright enough at his lessons. I inquired of the parents. The father hesitated; then admitted that the child laughed and cried without reason, although otherwise well behaved in the home. Further questioning drew forth the fact that the mother had been subject to fits all her life. I mentioned my suspicions to the Judge, and he ordered the boy examined by a nerve specialist. Eight of the leading physicians in town give their services free for the children of the Juvenile Court, where families involved cannot afford to make payment. The specialist called in on this case stated that the boy was mentally abnormal, and needed treatment. Scores of cases similar to this occur, where the child is not understood. The school rooms are too crowded for individual attention to these retarded development cases. We need the ungraded rooms that are so much talked of at the present moment.

This concludes my discussion of contributory causes to initial delinquency. In particular the study of the final 49 per cent cases fills one with a desire to have some competent authority start a school of training for parents! In this connection it might be well to mention our excellent adult delinquency law, which is coming more and more into its own. By this law an adult can be found guilty and fined if it is proved that he has in any way assisted in bringing about a child's delinquency. A careless father dislikes exceedingly to pay ten dollars because his son has been roaming the streets and wantonly marking buildings with chalk. Something is bound to happen in cases of this sort, but the results are often for the best.

All cases previously discussed have been those of children on probation. Our office is also engaged in preventive work,—cases that never reach the ear of the Judge. In 1908, 486 cases were settled out of Court. In 1909, the number was 602, and this year owing to the increased publicity given the Juvenile Court the record will probably be still higher. One example will explain this branch of the work. Last summer an informal complaint was sent in that two girls of a certain neighborhood were using vile language to boys in order to attract attention. These girls were also on the streets after dark. I visited in the neighborhood, and had repeated to me some of the exact conversations of the girls. I then saw the girls, and had a serious talk with them. They were very indignant, and somewhat ashamed, also frightened at my official authority. The first girl was motherless. I called on the mother of the second girl. The poor woman was dumb at first; then she wept. Before I left she had promised to teach the girls certain rules of conduct and to keep them in at night. In the end her gratitude for our assistance was overwhelming.

During this talk I have made no mention of de-

pendency cases. These consist of children who are neglected, and must be removed from the home because it has ceased to fulfill its required functions. Some of these cases fall directly under preventive work, in which the Humane Society is very active. Sometimes the Court takes the children away for a period, of say, six months, and the parents are given a chance to remake the home. Often the trouble is drink. Again it is simply bad housekeeping. One of my older cases was that of a woman who up to the day of her marriage had worked in a cigar factory. Of course, she knew nothing of keeping house. For meals she never set the table. Baker's bread was broken off in chunks and handed around. Sometimes it lay on the floor which was so caked with mud as to resemble a street crossing. We finally got the idea into Rose's head that as soon as she cleaned up, and showed that she could keep house, we would see that her children were returned. There followed days in quick succession when I visited that home. I had said "wash" to Rosie so often that she kept a dirty boiler filled with dirty water and clothes always on exhibition. She was just about to start washing each time I arrived, or so she claimed. It took three weeks to accomplish that first wash. Later the visiting housekeeper for the Associated Charities came in and gave her some general lessons. She found Rosie apt, and within a year her children were returned to her.

In the short time that the Juvenile Court has been established in Minneapolis (some five years) it would be expecting too much to prove lasting benefits from the probation system; but certain figures are encouraging: In 1908 we had 116 cases dealing with railroads, principally trespass and grain stealing. Now grain stealing is a most insidious introduction to larceny. A child starts out gathering up grain from the car tracks for chickens and doves, or even enters an open car and sweeps up

the grain. The next step is to push open the door of the full car, and carry off a bushel or so of wheat. Later these same boys in gangs will break off the lock of a freight car and carry away its contents,—whatever that may be. On one occasion it was $85.00 worth of shoes and rubbers. And then these same gangs, unless checked will in time invade the down town department stores to carry on their petty thievery there. In 1910, up to December 1st, we have had 47 of these grain cases as compared with 116 in 1908. The grain detectives feel that probation has helped these cases wherever it has been tried.

Since 1899 an index of all children's cases has been kept in Hennepin County, although for the first five and a half years there was no Juvenile Court proper. On examination of this record shows that the total number of cases brought in was 4,562.

Total number of girls	419	9% of total cases
Total girls in twice	22	5% of girl cases
Girls in thrice	1	

In explanation it may be said that girl cases are usually more serious than those involving boys, because they are brought in later, often too late. The percentage of girls in proportion to the total number brought in committed to institutions exceeds that of boys.

Total number boys	4143	91% of total
Total boys in twice	494	11% of total of boys
Total boys in thrice	113	3%
Boys in four times	29	
Boys in five times	9	
Boys in six times	6	

Naturally when a boy makes his appearance in Court for the third or fourth time he is often committed to a corrective institution, and that lowers our number of cases. Thus of the total number of cases indexed, 11 per cent were brought in the second time, as compared with ten per cent claimed by the Indianapolis Juvenile Court.

In closing I may state that we are still in the formative period of our work. New ideas and new wants are constantly coming up. I have tabulated a number of suggestions, several are in a nebulous state of evolution, already, that would go far toward making our system more effective.

(1) I would like to see every five and ten cent show in town done away with. The artificial heated atmosphere that they generate is destructive to the morals of growing boys and girls. In their overcrowded and dimly lighted halls boys and girls are over stimulated, and one more evil to combat is added to our work. In opposition to these, and of the highest benefit are the proposed school entertainments and neighborhood clubs to be held in school houses.

(2) I would like to see some system by which a large number of our children could be placed on farms for the summer months, and given suitable work. At present either the parent or the probation office arranges for each case individually. This lack of method wastes much time. A regular employment bureau might be added in connection. In this way we could be sure of supplying all our boys with positions, and a plan of keeping in touch with the boys' employers might be devised.

(3) As a third aid greater activity on the part of our churches is much to be desired. It is a shameful fact that the majority of our families can claim no church affiliation.

(4) We have no place at present to put girls who are delinquent in minor ways, and need home training more than anything else. All of our institutions are for the worst class of girls. We allow the nearly good girls to slip from us while all care is taken of the hardened offender.

(5) Industrial schools would go a long way toward curing some of our truancy cases.

(6) We need a place of detention in which to hold our children before trial, rather than in the children's ward at the city jail as is now the custom.

(7) We have good anti-cigarette laws, and a splendid curfew ordinance that ought to be enforced, as the following figures will show, 26 per cent of our boys placed on probation voluntarily admit using tobacco and and 36 per cent to being on the streets after 9 p. m.

(8) We need the whole time of our Juvenile Court Judge. We have a man on the bench who is ideally fitted to the position. We need more of his time and enthusiasm, that our cases may be studied into their finest detail.

To bring about these reforms and to use to the best advantage the facilities which now exist we must have the active sympathy and co-operation of the general public. Surely there can be no nobler task for the citizen of today, than that of aiding the little citizen of tomorrow to his fullest and fairest development.

FEEBLE-MINDEDNESS AND CRIMINALITY

By A. C. Rogers, M. D.

The discussion of this dual subject presents to my mind First, Two phases of the problem of the feeble-minded, (a) that of the institution, (b) that of the public school; Second, The co-relation between mental infirmity and criminality; Third, The questions of diagnosis, classification and nomenclature; Fourth, Suggestions as to prevention.

The institution phase of the present day problem of the feeble-minded started upon definite growth in 1837, when Seguin, during six months' work with a feeble-minded child, laid the foundation of the physiological method of education. Problems concerning mentally defectives and insane were much simpler when the latter were chained to the floor or walls of their cells and when idiots were relegated to the dark corners of attics or cellars of their homes; or, if disturbed and noisy, were confined in the cloisters of asylums for the insane. Seguin's work led to the establishment, one after another, of special schools with a view to educating the feeble-minded and returning them to their homes and society. These unjustified hopes were doomed to disappointment. While individuals of all grades of mental retardation can be trained and improved, the limitations of resources and the comparative meagerness of results when applied to extreme cases make the application of intensified methods to the latter impracticable, the degree of improvement being naturally limited in proportion to the profoundness of the mental defect. Thus there developed

a tendency to reject for training in special institutions, those who were comparatively unimprovable. The further fact developed from experience that even those most trainable were incompetent to compete on equal terms with their normal fellows in their struggle for life, with very few exceptions; hence, all but these few must be under permanent guardianship. Thus the institution has to do principally with two classes—First, Those improved under training, but not competent to go out. Second, Those practically untrainable. Both must have permanent guardianship, but their individual requirements are diverse and various. From this fact has developed the idea of the village community for the mentally incapable.

In these communities, the individual with limited mental endowment is worked with and instructed in a way impossible of realization elsewhere than in the community of his adoption where his naturally limited spontaneity is given full play; his relations to his companions and his attitude toward his teachers and others can assume a naturalness not possible for him in the general community; and what is still more important, a variety of occupations and interests are thus created for him. In these institution communities are found many eccentric and anti-social people, and a few delinquents; the Pharisee with abundant advice, ready with applications of scripture and ingenious in moralizing but negligent in the personal application of the precepts to himself; the youth who appropriates such property as appeals to his fancy and with an injured-innocence attitude is profoundly ignorant of any misdemeanor, although his pockets or jacket may be bulging suspiciously at the instant; the individual who delights in giving pain to animals, or tormenting unmercifully his associates, the so-called "moral imbecile" without apparent ethical responsibility. Again, the feeble-minded have from the nature of their infirmities, a more or less limited sense

of their responsibility in the relations of life and many are especially susceptible to suggestion, and thus easily lead into evil. A fundamental fact of feeble-mindedness is an arrest in development of the higher mental faculties, judgment and will. Self-control is, therefore, weak, and the appeal to the sensual nature is most successful. Here is where the problem of the feeble-minded and the problem of criminality are connected. With weak inhibition and with the appetites and sensual natures normal and growing by that upon which they feed, lacking often in wholesome environments, there is a progressive tendency for such persons to degenerate. Unless healthful activities are furnished to preempt their energies, they furnish dangerous, passive media for criminals and active agencies for aggravated offences of a minor nature.

Again taking the view of the penologist, illiteracy and stolid stupidity characterize many inmates of penal institutions. This fact has tended to attract attention to the possibility of many inmates of these institutions being distinctly feeble-minded and with increasing unanimity and emphasis their superintendents and wardens have been recording this conclusion in their official reports.

In looking over the few reports to which I have had access I find no systematic or scientific method of determining the mental status of the inmates, but a general unanimity as to the facts just stated. We find that the British Royal Commission of 1904 on the Care and Control of the Feeble-Minded, who undertook to study this problem very thoroughly and its relation to criminality, saw over 2,300 prisoners, among whom they estimated that at least 10 per cent were feeble-minded.

Justice J. M. Rhoades of England, in an article in the British Medical Journal in 1908, called the attention of the medical profession to the fact that out of 182,-

000 convictions for 1906, 107,000 had been convicted previously and that 10,000 or 6 per cent had been convicted more than 20 times before. In this he calls attention also to the specialization as, for example, individuals who will steal one special kind of article as a fowl, ladder, barrel, etc. He also calls attention to the fact that out of this 182,000, 39,000 were unable to read or write at all, and only 9,200 were able to read and write well. I am informed that Southerland in a recent work on Atavism maintains that one-third of criminal repeaters are pathological, suffering from mental warp, instability and feeble-mindedness, and that two-thirds of petty offenders are pathological in some way.

Dr. Duncan, an English penologist, insists that a large portion of major criminals are feeble-minded and 10 per cent to 15 per cent of the minor offenders are distinctly feeble-minded. The same Royal Commission, referred to above, finds that among the inebriate offenders 2 per cent are insane and 60 per cent mentally defective. Dr. William Healy of Chicago,* to whom I am indebted for some of the data of this paper, stated that, out of 12,000 admissions to the House of Correction in Chicago during 1908 only 60 per cent even made the claim that it was their first term in that institution; 14 per cent admitted having been in that place over three times and there are individuals who have been inmates over 200 times.

The reports of the Elmyra Reformatory, New York, having a population for many years of from 1,200 to 1,500, claim that 20 per cent of the inmates are mentally defective. Mr. Amos Butler, a prominent member of the International Prison Congress, in a recent address before the American Association for the Study of the Feeble-Minded, stated that he had checked up many

*"The Mentally Defective and the Courts" — Journal of Psychol-Asthenics, Faribault, September, 1910.

hundreds of the inmates of the Indiana Institutions and compared them with New York and found few discrepancies. Warden Wolfer and Superintendent Randall of this state, than whom there are no better authorities on prison statistics in this country, are inclined to favor the contention that 30 per cent of criminals in the United States are mentally defective. Of course, these figures are mere estimates but their chief value lies not so much in the accuracy of the percentages as the establishment of the fact of the close relationship between mental defect and criminality.

The public school phase of this problem assumed an advanced position when the London School Board opened its first "special classes" in 1892. In this country soon followed in a number of cities the special classes for "backward" and for "truant" children. With only a mere notice of the fact that a factor in promoting the organization of these classes in this country, was the discovery that from 10 per cent to 36 per cent of the children were over age for the grades of the school and the final conclusion that the curricula were planned for the brighest rather than the average pupils, we will note more carefully the observations that relate to this special discussion.

Parents are naturally slow to recognize defects in their own offspring, hence, mental deficiency, unless very pronounced, is often overlooked until the child goes to school and passes under the unbiased observation of his teacher and into comparison with other children, when a more accurate differentiation is made and thus a group of children has come to be recognized as "backward." In the "special classes" are found, First, Children, whose retardation is due to physical defects, correctable by the physician; Second, Those who through bad environment, or poor heredity, or both, have never learned much self-control or any definite power of ap-

plication to set tasks, or any sense of duty—children of impulse; Third, Various degrees of feeble-mindedness. The borderland cases, though this fact is not generally appreciated, present the greatest problems, because of their activity and aggressiveness, their power for mischief, a lack of the sense of responsibility; and because a proper diagnosis of the condition is not made by the parents, the teacher, the public peace officer or the court. It is from just such cases as are found in the "special classes" and the "truant schools" that, without the early influence which these classes and schools are created to foster, this large body of recruits is furnished to the penal institutions. Every person who has been publicly punished for crime or misdemeanors is, in a sense, turned against society. In the case of the boy, in whom the sense of responsibility is yet only imperfectly developed, this feeling can, by an unjust judgment or penalty, easily be made permanent and the attitude of the habitual criminal and recidivist developed.

This brings us to the question of diagnosis, classification and nomenclature. The terms descriptive of mental deficiency and its various phases have never been applied with accuracy or uniformity. "Feeble-mindedness," "imbecility," "idiocy" and "mental defectiveness" have all been used more or less interchangeably and the terms "mental retardation," "subnormality" and "exceptional children," intended to apply to children of slight mental defect, have been introduced to soften the opprobrium connected with the traditional words "idiot" and "idiocy," hence, has resulted an entire confusion in the use of the various terms. Any improvement in this matter could hardly be expected until some improved standard of comparison with normal children could be devised. One of the best definitions we have of a high-grade feeble-minded person (moron) is that of the Eng-

lish Royal Commission, viz: "One who is capable of earning a living under favourable circumstances, but is incapable, from mental defect existing from birth, or from an early age, (a) of competing on equal terms with his normal fellows; or (b) of managing himself and his affairs with ordinary prudence;" yet, while people accustomed to working with this class might make a very close diagnosis upon a superficial examination, the real *proof* of its correctness is the result of a well-tried effort "to compete with his fellows on equal terms" and to manage "himself and his affairs with ordinary prudence." Normal children are supposed to receive some training both of the schools and of life before their capacity for success is finally determined, so with the feeble-minded the necessary element of time, in a still greater degree, prevents a quick diagnosis that will be accepted readily by all. Hence, the confusion that arises both in school classification, and as to personal responsibility in criminal jurisprudence—when applied to the higher grades of mentally deficient children.

Suppose a man is to be tried for a sexual offence committed against a high-grade feeble-minded woman; if his guilt is not proven and there is only circumstantial evidence to sustain the accusation of the prosecution, the woman's testimony is presumed to decrease in value in proportion to her mental deficiency, while the gravity of the crime increases. If the defendant pleads guilty the gravity of the crime, legally considered, still depends upon the mental deficiency of the prosecuting witness. Hence, the vital question in each case is to determine the mental status of the aggrieved person which is only done satisfactorily by procuring witnesses to testify as to her conduct and capacity as compared with her playmates and schoolmates, and as manifested in the family life during her childhood and adolescence;

supplemented, if need be, by the advice of an expert as to the testimony presented in this manner.

What has been needed has been some simple system of laboratory tests that would determine upon direct examination of the child the limitations of his mental faculties and moral conceptions and then a classification which, while not ignoring other valuable descriptive terms, would measure the mental capacity of the deficient child in terms of the normal child—a scheme that would be of equal advantage to the physician, the teacher, the psychologist and the jurist.

The Binet-Simon tests, while used in this country less than two years, promise to be of much assistance in this matter. This method applied by an expert determines approximately the mental age of the child, that is, the mental capacity in terms of the age of an average normal child. As the *evolution of the mental capacity* of the normal child is practically completed by the time he is twelve or thirteen years of age, we have in this system, it is claimed, a means of determining with sufficient accuracy for practical purposes, the retardation of all mental deficients. If the system is scientifically correct in principle, we will find no deficient child over 12 or 13 years old mentally, and the wider the discrepancy between the actual age and the mental age, below this limit, the greater the mental deficiency. For convenience we arrange all of these cases into three groups and subdivide each group into three grades. Thus we have nine grades and, if we let 10 represent normal at thirteen years of age, we can apply the percentage method in expressing the mental capacity. The following table will illustrate this:

			Marking on Basis of 10	Mental Age
NORMAL			10	13
FEEBLE-MINDED	Morons	High-Grade	9	8 to 12
		Middle-Grade	8	
		Low-Grade	7	
	Imbeciles	High-Grade	6	3 to 7
		Middle-Grade	5	
		Low-Grade	4	
	Idiots	High-Grade	3	0 to 2
		Middle-Grade	2	
		Low-Grade	1	

The application of this system is evident. In the schools, there need be no difficulty in determining the diagnosis of the cases in "special" and "truant classes," and thus eliminating the truly feeble-minded requiring institutional attention and enabling the teacher to give her attention to the merely retarded cases. As an adjunct of the Juvenile Court it will be of special value in determining mental irresponsibility.

Through a philanthropic agency, funds are now supplied for the maintenance of a Juvenile Psychopathic Institute to whom are referred certain cases brought before the probate court in Chicago. While the social conditions from which the cases come are gone into carefully, the mental status is also determined. During one year, Dr. William Healy,* the efficient Medical Director of the service, found 68 cases of marked mental deficiency, among those brought before the court and most of them were of the distinctly institutional type. Superintendent Randall has secured the enthusiastic co-operation of the State Board of Control to have the inmates of the Reformatory examined as to their mental status, as he has stated, and we have the same support in organizing a department of research at the School for Feeble-Minded and Colony for Epileptics, one function of which will be to examine mentally all cases admitted, as a valuable assistance in classification for care and training.

*Ibid.

These investigations demonstrate and emphasize what long has been recognized by students of sociology, viz: the inter-relation between many forms of mental defect and criminality, as to their common origin in infirm hereditary strains or bad social conditions—usually both, hence, the necessity of studying carefully the family histories of the cases. Three classes of factors should be looked for in such researches, viz: First, The hereditary, requiring the determination of the number of individuals in the family, and their blood relationship, that show inferior mental and physical integrity; Second. The social environments of the family; Third, The special agencies that appear to have influenced the bodily nutrition unfavorably. Alcohol, narcotics, syphilis, chemical poisons, and tubercular germs are some of the factors the influence of which have a strong bearing on race degeneracy. The records of our public institutions, the associated charities of the large cities and the life insurance companies are all replete with data, that supplemented by field investigation would throw a volume of light upon this most important problem of modern life, prevention of race degeneracy.

DISCUSSION

By Rev. James Donahoe

The scope of probation and the manner of dealing with probationers has been so ably presented by the editor of the Dispatch that there is no need of my giving the data I have collected on this subject. In consequence I have decided to briefly discuss the merits of probation. We all know that probation has accomplished wonderful results in dealing with children, and we want to know if it is as successful when used to reform those who are brought before other courts. Turning to the figures here given and found printed in many places one would arrive at the conclusion that it has been an eminent success. I don't take this position and will present some facts to show that probation of adults does not and cannot achieve desirable results as it has with children.

I am a volunteer probation officer and being a priest I have both the power of the law and the church behind me. Some of those put on probation to me I have known and tried to reform before they came into court. Parents are often to blame but there are cases where good fathers and mothers have incorrigible children. Some of these after striving earnestly come to me and tell a sad story of filial insubordination and disregard of all parental and religious direction. Though I have learned that tears and entreaties have heretofore been of no avail I set about by moral suasion to awake the erring one to a sense of the culpability of his actions. The results of my efforts to guide such persons aright is very discouraging. They generally persist in wrong-

doing and at times I am in favor of bringing them into court.

What I wish to emphasize is; when I am a failure in reforming the wayward before they come into court how can I succeed so well after they are given into my moral care by a judge?

I find that before they have felt the power of the law they are deaf to advice and will not heed any one who is trying to turn them from their evil ways. I know that clergymen and zealous men and woman who visit jails and police headquarters to direct sinners to a better life are sometimes laughed at for their best efforts. After a court has pronounced them guilty and sentenced them to a penal institution they are willing to pay some attention to one who comes to awake them to a sense of the enormity of sin and its temporal and eternal consequences.

A short time ago I had the happiness of listening to a woman who has achieved wonderful success in uplifting those who have fallen lowest in the moral scale. That woman is Mrs. Maud Ballington Booth and as I listened to her tell of the reform of prisoners and the continued well doing of ex-convicts and appreciated her salutary influence over those who have deserved to feel the power of the law I wanted to know (what I believe you all want to know) what can even Mrs. Booth accomplish with the same kind of people before they are brought before a tribunal with power to punish them for their persistence in breaking both civil and divine laws. An incident narrated in her lecture, justifies me in coming to the conclusion that she would admit that little can be accomplished with a bad man or woman while yet free or when there is a possibility of getting free. She told us of a well-to-do lady of excellent character who came to her to ask her advice about a wayward son who had ruined his life and broken her

Third Session

PURE WATER SUPPLY

THE WATER SUPPLIES OF THE STATE OF MINNESOTA

By Richard Olding Beard, M. D.

The water supplies of the state of Minnesota exhibit local variations of quality and yet, taken as a whole, they do not differ essentially from those of any other locality. In studying individual water-sources one is struck at once by the marked differences in physical appearance which they present,—differences which are dependent chiefly upon the character of the soil underlying their basins or over which they flow. These peculiarities frequently complicate the question of water purification and put upon the sanitary engineer the necessity, in each case, of a careful study of the most available means of treatment.

An element of equally great variability is found in the quantities of lime and magnesia salts contained in water,—agents which determine its degree of hardness. Hardness in water is a relative term. It varies, both in measure and in the character of its cause, with factors the presence and operation of which are quite insusceptible of control. It ranges, both in surface and underground waters, within very wide limits. In lakes and rivers, it runs from fifteen parts to several hundred parts per million. Waters which in Minnesota would be considered soft, would be called hard in the New England states. On the other hand, the hardness of the Mississippi River water which, at Minneapolis, shows about 140 parts per million, is inconsiderable compared to that

of the Scioto River at Columbus, or of the Youghiogheny at McKeesport, Pa.

In so young and not closely populated a state as that of Minnesota, water supplies, unless they be of extreme hardness, do not present problems so difficult as those which confront older and more densely populous states; and that principally because they do not suffer so massive bacterial contamination.

The water sources of the state are divisible into:

(1) Underground waters obtainable by deep boring and gathered in the sandstone beds of the St. Peter, Jordan and Potsdam formations.

(2) Surface waters, which supply from their run-off six major and four minor river basins. Those of the major group are:

(a) The Minnesota River basin with a tributary population of, approximately, 450,000.

(b) The Mississippi River basin, above the Minnesota River, with a tributary population of, approximately, 650,000.

(c) The Mississippi River basin, below the Minnesota River, with a tributary population of, approximately, 460,000.

(d) The Red River basin, with a tributary population of, approximately, 230,000.

(e) The St. Croix River basin with a tributary population of, approximately, 150,000.

(f) The St. Louis River basin with a tributary population of, approximately, 125,000.

The minor group includes:

(g) The Rainy River basin with a tributary population of, approximately, 25,000.

(h) The Missouri River basin with a tributary population of, approximately, 35,000.

(i) The Des Moines River basin with a tributary population of, approximately, 45,000.

(j) Cedar River basin with a tributary population of, approximately, 45,000.

In direct ratio of their tributary population, these basins are liable to industrial pollution from mills and factories of different types and to municipal pollution from the many settlements upon their watersheds.

Situated within these basins and contributing their output to the river systems which lie within their drainage area are many small and some six relatively large lakes; viz, Leech Lake, Cass Lake, Winnibigoshish Lake, the upper and lower Red Lakes and Mille Lacs. In addition to these, Lake Superior, Rainy Lake and Lake of the Woods form parts of the boundary lines of the state. The great multitude of Minnesota lakes are small and shallow and are, now slowly—now rapidly, succumbing to the destructive influences of advancing settlement.

The general qualities of the waters of the river basins of the major group, as also the degree of bacterial contamination they suffer, are instructively shown in the appended table which gives the average results of many analyses. This table has been compiled from the report, of 1907, to the Department of the Interior upon "The Quality of Surface Waters in Minnesota," prepared by Mr. R. B. Dole and Dr. F. F. Wesbrook, and from additional and later data, to which I have had access through the courtesy of Dr. Wesbrook, Director of the Laboratories of the State Board of Health.

We may best judge of the qualities of available water supplies if we recognize the ideals which may fairly be expected of potable waters.

The United States courts have determined that public service corporations, under contract to supply a town or city with water for domestic, as well as manufacturing purposes, can be required to furnish that water not only free from disease-producing bacteria for each of the 365 days of the year, but practically free from phys-

AVERAGE QUALITIES OF WATER IN MINNESOTA RIVER BASINS

BASINS	Color	Odor	Turbidity	Chlorine	Alkalinity	Total Hardness	Alb. Ammonia	Free Ammonia	Nitrites	Nitrates	Total Bacteria	Percentage of Specimens Giving Bacilli Coli
a. Minnesota	30	----	70	6.4	220	470	.464	.193	.000	.160	1698	60%
b. Upper Mississippi	50	2*V*	<7	0.9	151	136	.475	.191	.000	.050	1259	55%
c. Lower Mississippi	25	0	10	1.3	124	132	.298	.080	.050	.000	3284	88%
d. Red River	60	2*V*	<7	0.9	151	136	.464	.191	.160	.009	2721	72%
e. St. Croix	70	2*V*	14	1.0	89	89	.239	.094	.050	.000	1644	72%
f. St. Louis	146	2*V*	13	0.9	42	54	.331	.055	.000	.020	619	38%

ical impurities, which would render it offensive to sight, smell or taste, even though it can be shown that these objective qualities are not prejudicial to health. If these are the legal rights of the public under such a contract, they suggest the moral, if not the legal obligations, of a town or municipal government to fulfill the same conditions when it assumes the duty of furnishing to the people a water-supply under its own immediate control.

It would be interesting to know whether the courts would support a claim for damages against any municipality failing in their fulfillment to the detriment of its citizens.

Freedom from bacterial pollution of specific or disease-producing quality, freedom from turbidity and color-stain and from vegetable growths—the decomposition of which would occasion an unpleasant taste or smell—are the conditions, then, which the people have a right to expect in a public water-supply. It would be desirable, doubtless, if we could wisely add to these requirements a minimal degree of hardness in the water to be furnished; but in attempting this ideal we find ourselves faced with several difficulties. Experience has shown that the means available for the reduction of excessive hardness are applicable only within certain limits and the expectation of remedy cannot fairly go beyond these. Even within such limits, these means are very costly and with a heavy load of hardness the expense of treatment reaches a prohibitive point. Finally, any demand for the softening of water has to bear the burden of proof that a hard water is not only factorially impossible, but that it is detrimental to health. This proof it cannot, at present, produce. It is a matter of common and even of professional belief that a water of great hardness is physiologically mischievous, but there is no experimental evidence of the alleged fact. It is a question of surmise, but it is not a matter of demonstration,

that calcareous deposits, in various parts of the animal body, have their origin in unduly hard drinking water. They frequently occur in persons who drink soft or distilled waters.

It is this quality of hardness in the underground waters of Minnesota, increasing, in most regions, with the depth and capacity of the sandstone basins, which is one of the two or three great arguments against reliance upon this form of supply. Such waters frequently exhibit also a very variable content of iron and, in some parts, even of manganese. Sudden chemical infection of this sort has been known to occur. Questions of quantity of supply of these under-ground waters will be discussed by Prof. Bass.

It is the surface waters of such a state as Minnesota upon which dependence must be put for public supply. Aside from the element of hardness, they vary from those of other localities in the degree, rather than in the causes of their intrinsic pollution and both in the kind and the quantity of the physical impurities they carry. They differ from each other, in similar fashion, to a certain degree.

The consideration of the causes of the pollution of the surface waters of the state is not greatly affected by the question of their lake-storage or their river-flow. Here, as elsewhere, surface waters are of identical origin. Rainfall, less evaporation, is the measure of their direct but minor supply. The run-off from their watershed is their indirect but major source,—the element determining quantity, upon which reliance must be placed. My colleague, Prof. Bass, will deal, also, with the relations of these facts to each other in determining the adequacy and permanence of supply.

With the recognition of this identity of origin comes the necessary corollary of identical pollution, in point of character; varied only in its effect by the influence, on

the one hand, of storage, and on the other hand, of flow.

I shall ask your attention, in turn, to each class among these causes of pollution.

(1) The agents of turbidity are those materials which, by virtue of their fine subdivision and the light weight of their particles, are capable of suspension in water. The degree of their subdivision and attenuation determines the temporary or the permanent quality of this suspension. The common agents of turbidity are sand, silt, clay and coal-dust. The presence of sand is mainly due to the action of wind on shallow lake bottoms or to the flushing effect of rain upon the sandbanks of lakes and rivers. Silt and clay are usually present as the result of the flow of water over or through beds into the composition of which these materials enter, this flow serving to wash out surface deposits. A coarse clay is readily removable by filtration; a fine clay, like that of the Potomac River, will pass through almost any filtering medium.

The presence of coal-dust is due to the neighborhood and washings of coal mines in process of working. In such waters as those of the Schuylkill, at Philadelphia, it is the principal physical impurity. It is, of course, not an item in Minnesota waters. The storage of water, whether in lake or artificial reservoirs, tends to the precipitation of the agents of turbidity. With the rapid flow of rivers such deposit becomes more difficult.

(2) Discoloration of water is merely apparent and due to the suspension of certain agents of turbidity and therefore removable with them; or is actual and is due to color-stain incident to the solution of certain coloring matters in the water, derived from decaying vegetable matter, and often from the soakage of the bark of logs. With the disappearance of many of the shallow lakes in Minnesota, with the drainage of swamps and with the diminution of logging operations, the tendency

to color-stain in surface waters is markedly diminishing. It has greatly lessened in the water of the Mississippi in the past few years. It is not favorably affected by storage. On the other hand, storage waters tend to become more completely impregnated with any color which is the product of vegetable decay, and the more so when the lake basin is shallow or surrounded by shallow bays. Color-stain is the most difficult form of pollution for removal.

(3) Certain surface waters become polluted by chemical agents which tend to produce markedly acid or alkaline reaction therein. These chemical agents are known as electrolytes, which means that they undergo dissociation or separation into their component ions, and these dissociated ions, according to their predominance, determine acidity or alkalinity. This process is encouraged by their solution and dilution in water. Hence it frequently happens that heavy rains, which are expected to lessen by dilution such chemical reaction, actually increase the tendency to dissociation and thereby emphasize the resultant acidity or alkalinity. The acid-iron-bearing agents in water are usually a consequence of mine drainage, as may be seen in the Youghiogheny at McKeesport. Counter-active chemical treatment is employed for the adjustment of these conditions.

(4.) A variety of vegetable growths, known as algae, appear, at certain seasons of the year, in surface waters under storage or in comparative stagnancy. They are of a number of types and do not all develop at the same period of the year. In themselves they are probably not injurious to human health. They are often so numerously present in suspension as to give an unpleasant appearance to the water. Like all vegetable forms, they undergo a seasonal death and, in the process of their decomposition, which is hastened by the inclusion or carriage of the water infected by them within pipes or con-

duits, they give rise to very unpleasant odors and tastes. They are quite generally prevalent in the waters of Minnesota lakes.

(5) There is a large number of water-borne bacteria which perform the useful office of destroying the organic material which water is apt to contain. Many of these are quite harmless to the human being and it is a mistake to suppose that water, in order to its proper purification, must be entirely freed from all bacterial forms. Their excessive number is objectionable, not so much in itself, as for the indication it affords of the presence of a large mass of organic material upon which these micro-organisms feed.

Among them, however, are found what we call pathogenic types; that is types which are productive of human disease. These bacteria are derived from sewage which finds its way into water or from the excreta of animals and birds deposited therein. The typhoid bacillus, the colon bacillus, the cholera organism and possibly other microbes, causative of lesser diarrheal diseases, are of these pathogenic types. The typhoid bacillus is difficult of direct discovery in water, while the colon bacillus is comparatively easy of recognition. Since both are directly conveyed to water from human waste, the colon bacillus is taken as an index of the presence of sewage; which is liable to contamination, also, with the typhoid organism. Water, so infected, is dangerous; and these micro-organisms, if present, must be efficiently removed in order to render water safely potable. The complete removal of the colon bacillus and, therefore, of the typhoid bacillus, which is even more readily destroyed, together with the reduction of other bacilli to the standard number of not over one hundred to the cubic centimeter, are the ideals of purification after which we strive.

The surface waters of the state of Minnesota pre-

sent comparatively simple conditions for treatment. The very large number of small lakes existing in the state are wholly inadequate for purposes of public supply. A very few of the larger bodies of water may prove ultimate possibilities, but they lie at long distances from the chief centers of population and water from them can be delivered only at the cost of large investment and, in some instances, under great engineering difficulties.

The water of Lake St. Croix is the softest water within reach, averaging some forty parts of hardness in a million, but its volume is inadequate for the supply of any large city; its shore lines are difficult of control and it is the subject of constant bacterial pollution.

Mille Lacs, on account of its large area and possibilities of gravity supply has been considered recently as a possible source for the use of the city of Minneapolis. Despite its scant neighboring population it is not always free from specific bacterial taint. So frequently is it wind-swept, as to cause its common sand-pollution. It has numerous shallow bays within which varieties of algae thrive. It shows little color-stain. It is comparatively shallow and has so small a water-shed, relative to its great surface area, as to render it a dangerously variable and uncertain source of supply. The past dry season has proven the actuality of this menace of deficiency. An output which, within a year, ran as high as fifty million gallons a day fell, this autumn, as low as fifteen million gallons, while the general depth was diminished by more than two feet.

No other large lake is within available distance of the principal centers of population in the state, excepting Lake Superior. In respect to softness, clarity, low temperature and freedom from algae, its waters are ideal; but there are obstacles to its delivery very expensive to overcome and there is no good reason to doubt that the necessity of its filtration would ultimately, if not imme-

diately, obtain. That Toronto finds it necessary to filter the water of Lake Ontario is sufficient ground for this judgment of the Lake Superior supply.

There are chains of small lakes which are drawn upon for local needs but, while they may be temporarily both adequate and unpolluted, deficiency of quantity and inevitable contamination are ever threatening and ultimately certain dangers. Algaeal pollution makes them always seasonally unfit.

Rivers offer the most readily available water sources. By virtue of their flowage over various mineral formations their water is usually harder than is the water of most of our lakes; none of which, however, are really soft.

Since the supply of all surface waters is of identical origin and of similar liability to pollution, it follows that they will all demand ultimate, if not immediate, purification. Since the contamination of a lake or river by disease-producing organisms may occur at any moment, and, since a single case of typhoid fever, occuring on the run-off of a lake or river, may furnish material sufficient to infect a whole community which uses the water so polluted, the postponement of purification is a standing invitation to disaster. This statement has no merely theoretical basis of truth. It is substantiated by the actual history of extensive epidemics of disease, traceable to single cases of typhoid fever occurring on a water-shed.

Lake water, especially in deep basins, has the opportunity of precipitation, not only of such gross physical impurities as sand, silt and clay, but also of bacteria. A given degree of precipitation will be accomplished much more slowly in flowing streams, and the first preliminary of treatment of river water is to impound it in reservoirs. This tendency to precipitation in lake basins is lessened by the wind-sweeping of shallow waters and

is temporarily counteracted, in deeper lakes, when the spring and fall turn-overs occur.

Starvation of bacteria will be observed in all impounded waters in which there is a poverty of organic material. It is fortunate that the principal disease-producing organisms have a comparatively short life. The storage of water, whether in natural or artificial reservoirs, is to be regarded, therefore, as a purification measure, upon which, however, exclusive reliance cannot be placed.

The several methods employed for the purification of water will be discussed by Prof. Bass.

The consideration of the water-supplies of the state of Minnesota would not be complete without reference to the water diet of its many farms. These homes of the farmer are, now and then, in the vicinity of spring, lake or river. Far oftener, they are within reach of no surface-supply and the farmer has to resort to the immemorial method of digging, boring, drilling or driving through the earth's crust for his drinking-water. Such a source, once attained, gives him, usually, a comfortable sense of security in the character of his supply. It has become an axiom in the minds of many that water which is brought up from beneath must be pure. They accept its relative measure of hardness, but they do not question its purity.

In view of the varied and doubtful character of many of these farm water-supplies, Mr. Karl F. Kellerman, of the Bureau of Plant Industry in the U. S. Department of Agriculture, and Mr. H. A. Whittaker, chemist of the Minnesota State Board of Health, undertook their investigation, a year or two since, and the results of their inquiry appear in the form of Bulletin No. 154, issued by the Department at Washington.

Some seventy-four farms, having some seventy-nine water-supplies, situated in twenty-one counties of the

state of Minnesota, were investigated. While these do not constitute an altogether fair average of conditions upon Minnesota farms in general, since several known cases of contamination were selected for study, it is a safe conclusion that the results would not greatly vary were the inquiry extended still more widely.

Of the seventy-nine specimen waters examined, 59 were found to be polluted; 20 were good. Of the entire number, 23 farms had a history of typhoid fever. Five of these had a satisfactory water-supply; eighteen did not. The relation between water-supply and typhoid infection was in many cases not apparent; but the study served to show what is of still greater importance, that "extensive outbreaks of typhoid fever upon farms were associated with pulluted water-supplies," and that this pollution serves as a good index to the general "sanitary condition of the farm and therefore indicates the potentiality of a typhoid outbreak."*

Of still greater interest is the analysis of types of water-supply which these studies afford. They go to show:

(1) That surface waters, on the farm, as elsewhere are peculiarly liable to pollution. All such specimens examined, were contaminated. The writer cannot, however, agree with these investigators in their expressed doubt that "satisfactory supplies for farm use can ever be secured from such sources." The many cases of efficient purification, by miniature filtration plants, of the effluents of lakes and of small streams flowing into the rivers under the control of the Massachusetts Metropolitan Water Board, go to show that this doubt may be relieved and that the education of the farmer may achieve the safety of his water-supplies.

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*An Analytical and Epidemiological Study of Farm Water Supplies, Kellerman and Whittaker. American Journal of Public Hygiene, Vol. XX No 3

(2) That springs and wells unless carefully protected from surface pollution will suffer to the point of danger.

Preference is given by the report to the driven well, because, while it is usually far less deep than the drilled well, the casing of the latter affords an easy path for surface-seepage. Wherever wells are used in conjunction with small reservoirs for farm supply, it should be entirely possible to run the output through a small filtration basin and thus safeguard the integrity of its quality.

It is not too much to hope that education may serve to correct the mischiefs of indiscriminate water-supply upon the farm. The suggestion emphasizes the relation of the hygienist and the sanitary engineer to the work of the agricultural college and the farm school.

The question of the physiologic effects of purification methods is often raised and much popular prejudice exists regarding the use of chemicals as agents either of coagulation or oxidation. This prejudice is, of course, purely a matter of ignorance; but it has to be reckoned with as a matter of public concern and only gradually can it be overcome. One of the leading sanitary engineers of the country, Mr. George H. Benzenberg, to whose genius Cincinnati mainly owes her magnificent water plant, declines to recommend the use of certain chemicals which he knows are absolutely harmless,—nay, impossible of harm,—merely because the public does not believe in their harmlessness. Human prejudice he regards as something to be reckoned with.

Suffice it to say that the very process of action of the chemicals which are used either for the coagulation and precipitation of materials of pollution in water or for the direct destruction of bacteria and of organic material in water, involves the removal or destruction of the chemicals themselves. It goes without saying that

this and every other measure for the purification of water must be directed by competent experts.

Much has been said of the dangers which turn upon the human element in water purification, but it attaches to the ignorant and untrained, rather than to the expert employe. The influence of this human element, so far as it *is* ignorant or untrained, may be and should be minimized by the adoption of mechanical appliances for control at every stage in the process of purification; but over and above the mechanical control must preside the human expert.

The most important points governing the use and treatment of water-supplies upon which emphasis should be put are:

(a) That all the surface waters of Minnesota or, for that matter, of any other state, are inevitably subject to pollution.

(b) That one and all of them are, therefore, unfit and unsafe for drinking purposes without purification.

(c) That the community which ventures their use upon the supposition of their initial purity will, sooner or later awaken to the consequences of its error in disaster.

(d) That no matter how seriously contaminated a water-supply may be, it is susceptible of safe and sure purification by a variety of means, which must be carefully adapted to local needs.

(e) That in this, as in every matter of sanitation, prevention is saner and sounder than cure.

That human sewage is the cause of the bacterial pollution of water with disease-producing organisms should be subject matter for serious reflection. It emphasizes the primary point to which social reform in this direction should be addressed in the state of Minnesota, as elsewhere,—the point of sewage disposal.

Since 1885, a law has been upon our statute books which prohibits the discharge of sewage, drainage, refuse or other polluting material into any surface waters used as a source of municipal supply; and which empowers the State Board of Health to supervise all municipal water supplies and to institute legal proceedings against violators of the statute.

While the provisions of this law are not so broad and conclusive as they should be, the State Board of Health is subject for criticism in that it has never attempted the exercise of this duty and has never brought even a test-case to determine the validity of the act or the scope of its own powers.

A broader and better defined measure should be presented to and enacted by the next legislature, and public sentiment should be systematically educated to the successful enforcement of the law. This cannot be done without at least an attempt at its enforcement.

The present practice of polluting our water-supplies with human sewage is not merely the most loathsome of which civilized society is guilty,—is not only a crime against public sanitation,—but it is a colossal economic blunder. The life-blood of the soil is under progressive exhaustion and the very material which would abundantly and profitably recoup its losses is being run to worse than waste,—to the peril of human health and to the sacrifice of human life. And all this for no other reason than that popular inertia does and continues to do the thing that is easiest to be done.

The people of the state of Minnesota should seriously address themselves to the sanitation and economic disposal of the sewage which now pollutes their lakes and water-courses,—a pollution which is directly responsible for so large a share of their diseases. If moral power is the product of moral resistance there is no subject upon which the moral sense of the state of Minnesota can more fitly exercise itself and grow strong.

THE PUBLIC WATER-SUPPLY AND MEANS OF PROTECTING IT

By FREDERIC BASS

A supply of pure water for public purposes is practically always obtainable. The work of securing such a supply presents sanitary, engineering and economic problems. Sanitation establishes the standard of quality.

The methods by which these standards may be attained are essentially those of engineering; while the selection of the *best* supply from several possible sources rests upon an economic basis.

A water of acceptable quality is one which is unobjectionable to the senses of sight, taste and smell and which is also free from chemical impurities, from bacteria in large numbers and from pathogenic bacteria *absolutely*. In sparsely settled regions it is often possible to obtain water which has not been polluted since it fell from the sky, but in thickly inhabited districts this is impossible. In some cases, water originally polluted will purify itself by natural processes, such as dilution by purer water, sedimentation, aeration and the action of sunlight. When such factors are not present artificial means must be employed.

Excessive organic impurities will not be present in clear colorless water with one notable exception: bacteria may occur in great numbers without ocular evidence. The chemical composition of organic impurities is of great importance in giving some indication of the probable history of pollution. For instance, the nitrogenous

compounds which represent organic matter, may be of either vegetable or animal origin. The chemical analysis detects these compounds in the water, but a survey of the source itself is necessary to determine whether one or both are present.

The organic matter if of vegetable origin has no significance, but if of animal and especially of human origin, it has immense significance, and the state of the nitrogen compounds whether in the form of ammonias, nitrites or nitrates, indicates the time elapsed since the pollution occurred.

The organic matter as determined chemically is harmless in itself, although before the establishment of the great science of bacteriology on its present basis, this view was not generally held.

The chemical tests are useful principally as records of the progressive pollution of streams during considerable periods of years, but for individual analyses of water, when bacteriological tests are made and full knowledge of the source is available they are usually of very little value.

The principal inquiry of all analysis of water is: Are there any pathogenic bacteria present? The chemical analysis may determine that a long time has elapsed since water was polluted and therefore the bacteria have possibly had time to die out. *But it cannot determine whether they have died out.*

Bacteriological tests must be the principal guide in judging of the sanitary quality of water. The total number of bacteria should be small, perhaps not over 100 per cubic centimeter. There should be no bacteria of types peculiar to excrement. The greatest danger resulting from sewage polluted water is typhoid fever, but it so happens that the specific germ of typhoid fever is extremely difficult of detection in water and so another bacillus, the colon, is sought.

Thus it is seen that all tests for the specific cause of trouble in polluted water are indirect. The point in all sanitary water analyses is this: If characteristic constituents of sewage are present, then pathogenic bacteria *may* be present also. When sewage can be *seen* pouring into a stream which is used directly below as a source of water-supply, a chemical or bacteriological analysis would be superfluous—no additional useful information could be furnished thereby. The distance between the point where the sewage is discharged into a stream and the point where the water polluted by it is taken out, is of importance only when the velocity of the current is taken into account. Pathogenic bacteria when in rivers find themselves in unfavorable environment and die out gradually. The best evidence at present indicates that 10 to 14 days is necessary.

In Minnesota, there are about 40 municipalities having a population of 3,000 and over. There are 20 which have a population of more than 5,000. The total population of these 20 cities is approximately 800,000. Of these 800,000, 720,000 living in 10 cities receive water from surface sources and 80,000 or 10 per cent, from ground water sources. Out of 720,000 persons less than 100,000 receive water of a satisfactory quality, although in about one year when Minneapolis has been supplied through its purification plant now in process of construction, there will be about 400,000 persons in Minnesota so supplied, that is to say, something over 50 per cent of the 720,000 referred to.

Of the 80,000 persons living in 10 cities supplied by ground water, about 45,000 or nearly 70 per cent have water of proper quality.

In the smaller cities and villages the proportion of ground water-supplies is much larger than that of the surface water-supplies. Generally speaking, the water is ordinarily of good sanitary quality, but often subject, on

account of defects in construction and carelessness in maintenance, to occasional pollution. An instance of such pollution will be referred to later.

Ground waters are usually contaminated when at all, by the communities using them, and, while the whole state is interested in the results of contagious disease from such a source, it is only through the result that it is interested in the cause. On the other hand surface waters, especially rivers, may be polluted by one or more communities which may be many miles removed from the point where the water is taken for use. Therefore the whole state is directly concerned in the cause as well as the result of the pollution of surface waters.

Let us take for example, the Mississippi River within Minnesota. Near its headwaters is the city of Bemidji; 80 miles below is the city of Grand Rapids, between lie Lake Bemidji and Lake Winnibigosh. It is almost inconceivable that any bacterial pollution introduced at Bemidji should reach Grand Rapids because Lake Winnibigosh stores months flow of the Mississippi River and in that time the pathogenic germs would have scattered and perished. Any pollution introduced above Lake Winnibigosh cannot be considered as having any effect upon the sanitary quality of the water below that lake.

Below Grand Rapids is Aitkin, seventy miles distant. Forty miles below Aitkin is Brainerd. Thirty-five miles below Brainerd is Little Falls. Thirty-five miles below Little Falls is St. Cloud. Seventy miles below St. Cloud is Minneapolis.

Grand Rapids perhaps at present needs no artificial protection, Aitkin uses another source of supply than the Mississippi but Brainerd has been in grave danger until recently when a disinfection plant was installed and a recent engineering graduate of the state university employed to operate it. St. Cloud still uses the river polluted by sewage from above, unpurified. The time of flow

from the polluting sources is insufficient for natural causes of purification to be effective and this city for years has been and still is a typhoid fever center, causing death and disaster not only to its own citizens but to other communities.

Minneapolis formerly could be characterized in the same manner, but now its city water-supply is disinfected and soon will be filtered as well. Taking the average rate of flow of the Mississippi at 3 miles per hour or 72 miles per day, and remembering that typhoid bacteria will live in river water 14 days it will be seen that not until this river has flowed for a thousand miles will time enough have elapsed for all typhoid bacteria to have perished.

In such a river as this there are also many *small* sources of pollution; they are far too numerous to discover and eliminate or even to regulate; also storm water, often as dangerous as house sewage, cannot on account of its volume, be purified.

SOME POLLUTION MUST OCCUR

The question is: *HOW MUCH?*

No one would think of any other answer than "As little as is possible and practicable." Only those unacquainted with such problems can think that this is a simple proposition.

It would not be beyond the bounds of human possibility, however, to prevent all pollution, but it would require martial law and that of a character not known within the United States. Only Germany, or Japan, and the United States at Panama, have shown evidence of such strict control under martial law and no country on earth has ever successfully prevented all pollution from entering streams or lakes in inhabited regions under civil administration.

Since all pollution cannot be prevented to see what is possible, it remains to examine the processes which have been, and are used for the purification of sewage and for the purification of water.

First: The purification of sewage:

The sewage of the ordinary American city contains in each 1,000 parts, more than 999 parts water. Of the remaining one part, usually over one-half, is mineral. The remainder approximately 0.04 of 1 per cent, is organic matter. In all purification processes, this organic matter is either wholly or in part removed, or changed in character.

The simplest structure for the removal of suspended matter is a simple grating or screen; often this is the only treatment necessary where the amount of sewage is small and the body of water into which it is discharged is large and where no water-supply is taken from the immediate vicinity. Another common method of accomplishing the same object is to hold the sewage in a tank so that sedimentation of solids may take place. Both of these processes mean nothing more than clarification, which is partial purification.

The use of the sedimentation process gave rise to the problem of disposing of the sediment, a very difficult matter to perform satisfactorily. To meet this, a tank was constructed which held the sewage so long that putrefaction was set up. This action, due to biological causes, resulted in most cases in the breaking up of the suspended matter and of converting a part of it to the liquid and gaseous state. A large portion of the sediment was thus carried out in the effluent to be disposed of by subsequent treatment. Enough sediment usually remained in the tank, however, to cause much annoyance when it became necessary to remove it. This type of tank came to be known as the "Septic Tank" and for many years has been extensively used.

A further development of the sedimentation process has occurred in England in the so-called "Travis" tank, and in Germany in the "Imhoff" tank, named after their inventors. In these tanks there are two compartments, an upper, in which the sedimentation occurs and a lower, into which the sediment passes and remains to ferment and "rot out." In other words, to become so completely mineralized that it is inoffensive. In the "Imhoff" tank, this sediment or "sludge" as it is called, resembles peat or heavy black earth, having no offensive odor. The effluent from the upper part of the tank, from which perhaps 50 per cent of the organic matter has been removed, goes on either directly to the stream or to a further process of purification on land.

If greater purification is required than can be obtained by sedimentation, filtration is employed. The body of a sewage filter may be of large particles, 6″ upon the result desired. The necessary action to be produced is the separation of the liquid into thin films which shall be exposed to the air while passing over the surfaces of the filter medium. During the process much of the finer matter in suspension is left on the surfaces where the organic portion is attacked by bacteria and partially oxidized to a mineral state. This mineral matter together with whatever unoxidized organic matter that may not have been caught, sooner or later makes its appearance either in solution or suspension in the effluent of the filter.

In the earliest forms of filters, the natural earth was used. Later, sand filters with underdrains were artificially constructed and still later, coarse grain filters were adopted. These coarse filters are capable of taking sewage which has been treated in a tank and further oxidizing the organic matter so that it will not become putrescible.

One cubic foot of such a filter will treat 5 or 6 cubic feet of sewage per day. Such an effluent can be run into a very small stream in which appearance is unimportant.

Where appearance *is* important and a clear as well as non-putrescible effluent is required, a further filtration, preferably through a fine medium at low rate is desirable.

Finally, if the effluent must in addition be free from pathogenic bacteria, some form of disinfection is necessary. The best process for this purpose employes hypochlorite of lime as the active agent. This treatment is exactly the same as that used for the disinfection of water and will be described later when methods of water purification are discussed.

The operation of sewage purification plants is successful only when under intelligent and experienced supervision.

WATER PURIFICATION

The methods of water purification used in this country today, ordinarily include some form of filtration. Waters which are clear and with little color are usually purified by what is known as slow sand filtration. A bed of fine grain sand, properly confined, about three feet in depth, receives the water, which is maintained on top of the sand at a depth of about 3 feet. As the water gradually passes through the filter, it leaves a deposit on the surfaces of the sand grains, which is of a gelatinous consistency. This deposit intercepts suspended matter. It also contains bacterial life which aids in the oxidation.

Waters which are turbid cannot be readily purified by this means. They are first treated with a chemical, which produces a floculent precipitate upon being added

to the water, and which, upon settling, carries down with it much of the turbidity. A portion of this coagulant is carried over onto the filter, (in this case also, composed of a bed of sand). This portion of the coagulant forms a coating on the sand particles which performs much the same function (although in a different manner) in removing bacteria and other suspended matter that the bacterial deposit does in the slow sand filter. The water passes through this type of filter with a vertical velocity of about 300 feet per day, 40 times as fast as that of the slow sand filter.

Both of these types of filters are very efficient in producing a water of excellent quality. In Hamburg, Germany, the River Elbe is used as the source of water-supply. It is filtered by slow sand filtration and the bacteless than 100. At this point the Elbe has received the partially purified sewage of about six million urban inhabitants. Typhoid and cholera, the principal water borne diseases, have been for the last fifteen years, or since the filter was put in service, practically of little importance in Hamburg.

Rapid filters under careful management are as effective as slow filters. Both however are subject to difficulties in operation and cannot be considered as absolutely removing danger from water borne diseases No filter of any type can do this continuously.

Other types of filters used for which there is not time for description, are the multiple-succession filters of the Puech-Chabal Company of Paris, the double filters of Zurich and Bremen where water is filtered twice in succession, and the non-submerged filters of Miquel.

During the past few years the demand for water of a still higher quality than that furnished by filters has led to the adoption of certain finishing processes, so-called. Disinfection of water by ozone after filtration

has been adopted in several French cities. In the United States disinfection has been accomplished by the use of ozone furnished from certain salts. Hypochlorite of lime or sodium when added to water immediately forms hypochlorous acid which, being an unstable compound, decomposes, and gives off an atom of oxygen in the nascent state. This atom of oxygen immediately attacks the organic matter present. The less the organic matter the less the amount of chemical needed. The amount necessary is at any rate very small indeed. One part of hypochlorite to 1,000,000 parts of water is often sufficient. Certain waters require more. This process is particularly interesting as it is in use in Minneapolis at present. Other cities in Minnesota using the process are Hibbing, Brainerd, and East Grand Forks. Still others are contemplating its use.

No country in the world today is more advanced in its adaptation of science to water purification than the United States. Efficiency and low cost are combined here as they are nowhere else. Minnesota in a few years will not be behind any state in the Union in the practice of water purification.

It has been attempted to show here:

1st—That no stream can be kept unpolluted, even though municipal sewage is thoroughly purified.

2nd—That water purification processes have been developed to such a high degree of efficiency that pure, clear and brilliant water can be had for universal public use.

3rd—That since these things are so, they demand that the pollution which enters surface water between the time when it falls as rain from the sky and the time when it enters the mouth of the consumer be removed entirely. This purification can be said to take place in three stages:

First. Just before polluting sewage enters the river by means of purification works.

Second. By the natural purifying power of open water.

Third: By complete purification of the water just before it enters the intakes of the water-supply.

To place undue emphasis upon the first is to overestimate its reliability: to neglect the second is to leave unutilized a great natural resource: To rely upon the last as the real protection is in accordance with the best experience derived from long continued and careful observations of the highest authorities on sanitation. Partial purification of sewage is usually needed: Complete purification but seldom.

At best this is but one factor, and then not the most important one in the delivery of pure water, which itself is but one of the many great problems of public sanitation.

The law in Minnesota in regard to stream and lake pollution is very explicit. It is drastic. It reads as follows:

"No sewage or other matter that will impair the healthfulness of water shall be deposited where it will fall or drain into any pond or stream used as a source of water-supply for domestic use."

It is interesting to note that there is no instance on record of any municipality in the state that is complying with the law. This is due to the extreme burden which compliance would impose.

The law further gives to the State Board of Health general charge of all springs, wells, ponds, and streams used for domestic purposes.

If the State Board of Health should take steps to enforce this law, it would first as a matter of precau-

tion be obliged to obtain evidence of pollution, its history and its exact effect upon the quality of water at the point where it was used. To do this for the whole state or even for one drainage area in such a manner that the evidence would stand in court would be absolutely impossible with the funds now available, and again, with the law in its present state, no case could be decided according to its merits. The merits of a case might easily show that water purification rather than sewage purification was the proper remedy. Indeed, it was so thought in the case of Minneapolis. Otherwise why did not this city insist that the state enforce its law and stop the pollution of the Mississippi River above the Minneapolis intake? The answer is: That it was better, safer, and less expensive to purify its own water-supply and let the pollution go on.

The time will soon come, however, when this pollution will be so great that it will have to be brought under effective regulation.

This point is important and should be anticipated by a study of conditions. Continuous records of the conditions bearing upon the quality of sources of public water-supply should be kept, and it should be understood that this will never be done by charity or by private subscription. The state is the benefactor and should stand for the cost.

A law should be enacted which is broader in its scope. The state through its Board of Health should be in a position to see that each and every public water-supply is beyond reproach. Not merely that the one stage of sewage purification on land should be covered, but also that subsequent stages of purification should be provided for, including that of public water-supplies. All are a part of the same problem, wherever a water-supply is involved at all.

The future of the problem here will undoubtedly

be similar to that in older communities. Nowhere in England or Germany is the attempt made to purify sewage to the point where it can be used for drinking water, before pouring it into streams, but hundreds of plants purify it to the point where it is inoffensive. Purification of surface waters used as a source of public water-supply, however, is general.

With ground waters, the problem of quality is far simpler. Contamination is a matter of carelessness in construction or maintenance. This was the case at Mankato, where in 1908, a most severe typhoid epidemic due to polluted well-water, occurred.

A rusted-out well casing, a defective sewer system and a flood made the proper combination. It was estimated that six thousand persons were more or less affected. There were 506 cases of typhoid, of which about 60 proved fatal. An analysis of the case showed that 30 cities outside of Mankato had typhoid carried to them from this place.

A number of other well-water-supplies in Minnesota are waiting for the proper combination of conditions, and then the trouble will come. Why should not these supplies also be the subject of solicitude on the part of the state, without special invitation from local authorities?

It is easy for a city to obtain water of good sanitary quality from the ground but it usually in Minnesota contains mineral salts and iron in large quantities which impair its value and lead to its rejection for many purposes. There are many small villages and cities where shallow, polluted private wells are used simply because of the superior softness and lack of iron. Ground water of good quality can usually be softened and freed from iron at comparatively little expense, at any rate, nearly always, would such softening be a good investment on account of the increased demand for the product.

Into this problem of water-supply comes the question of quantity. It is one which cannot be separated from that of quality. Two supplies may be of equal quality, but one may promise an inadequate supply or it may be too expensive, and to determine this the physical conditions of topography, geology and meterology must be determined.

A reference to the studies made of the Minneapolis supply will furnish a concrete instance. Here the choice between a ground water and a surface water was first made. It was certain that an inexhaustible supply of water of undoubted purity laid immediately below the city. That it could be brought to the surface was equally certain. But the cost of sinking wells, spaced sufficiently far apart so that they would not interfere with each other, and of the connecting force mains with additional pumping stations, together with the cost of covering the Columbia Heights reservoir necessary to prevent disagreeable algae growths, would be considerably in excess of the cost of obtaining an equally good filtered water from the river. Moreover, this ground water would have to be softened to make it available for commercial purposes. The cost of softening would be nearly as much as the cost of purifying river water. However, the cost of softened ground water would be much less than any other surface water-supply and more satisfactory.

A surface supply from Lake Superior, 150 miles distant, was talked of. But a mere glance at the magnitude of such an undertaking would indicate that however desirable, it would be beyond the financial ability of the city to execute it.

Another surface supply that of Mille Lacs 80 miles distant was considered. No expensive pumping plant would be required, as the water would flow by gravity to the Columbia Heights reservoir to which river water

must be elevated by pumping. The quality of this water was good, the pollution being very slight. Some doubt in regard to the quantity caused an investigation to be made. In order that the methods of conducting such an investigation may be clear, the principal points considered will be enumerated.

They are as follows:

1. The magnitude of the drainage area of the lake.
2. Character of the surface of this drainage area.
3. The rainfall.
4. The probable evaporation from surfaces of varying character, particularly from water, here very large on account of the large amount of water surface and the high temperature of the water due to the shallowness of the lake.
5. The area multiplied by the rainfall gives the total amount of water collected. By substracting evaporation, the total amount of water available is obtained.
6. In this case the amount was insufficient for the average demand of the city 20 years hence. This fact taken in connection with the high cost of obtaining the supply, was sufficient to cause the rejection of the project.

This is an indirect method, and was necessary in the case on account of lack of data which would show the available supply directly.

The most satisfactory way in which to arrive at the quantity of a flowing stream is to measure it directly, continuing the measurements over a series of years. However such data are rare. The very valuable work of the United States Geological Survey in this connection in Minnesota is worthy of attention and support, for the data thus gained are useful not only for municipal water-supply but for water-power projects and all affairs affected by water resources.

If a supply from deep wells had been decided upon, the problem would involve the following principles:

First; a well in which water rises to the surface of the ground will, under certain conditions, yield a certain definite amount. If a pump is put on, the yield can be increased, and increased in direct proportion to the distance that the water is lowered.

Again, when a well is thus drawn down, the water level or water pressure in the adjacent ground is also drawn down, but more at the well than at a distance. At some definite horizontal distance from the well, the ground water level is not affected.

This distance is entirely controlled by the nature of the water bearing material. In a fine, densely packed sand it would be very small; in a course, loose sand it would be greater, and the greater it is, the further wells would have to be spaced so that their circles of influence would not intersect and their yields therefor be diminished.

Thus the character as well as the extent of the water bearing stratum is a very important factor in the yield of a ground water-supply. The spacing of wells affects the cost because the connecting pipes are at least as costly as the wells themselves, and if the spacing is wide, more costly.

The only way in which to accurately predict the yield of wells is by long time pumping tests and it is seldom that this is done. In the case of St. Cloud, a short time test of pumping was relied upon and the wells then put in service; some very promising wells were soon exhausted and abandoned. Of course they recovered, but would be as easily pumped dry again.

In Minnesota the majority of the urban population is supplied from surface sources, but by far the larger number of water-supplies are from ground sources. In the southeastern part of the state the Ordovician strata

including the Jordan and Dresbach sandstones, supply the water; in the southwestern part of the Cretaceous strata are water bearing.

Both of these are underlain by the older granite formation which outcrops in the vicinity of St. Cloud. Many of the smaller supplies are from the overlying glacial drift. These latter are the ones which are most susceptible to surface pollution, especially when the drift is of coarse gravel.

There is no single publication or source of information which contains a comprehensive survey of the sources of water-supply in Minnesota. The State Board of Health is gradually collecting information. Blank forms have been prepared and have been completed covering the condition in many communities in the northern part of the state. It is the intention to complete this work of investigation so that the exact condition of the water-supply of every community shall be known. All of the merits and defects will be tabulated, the experiences of many localities will be gathered together in such form that each community may have the benefit from all. Unsuspected defects will be brought to light and the remedy shown; economies in construction and operation will be effected; and most important of all, the lives of the people will be kept out of danger.

There is a great necessity for a properly supported central state authority in these matters, and every community is very willing and even anxious that every other one should come under this authority, but such is the love of local self government that few communities are willing to be themselves placed under any state authority. Perhaps it is that the motive of the central control that is misunderstood. If the state can be confidently looked to for guidance in these matters and such guidance is given, not only much to the benefit of that village which asks it, but for the whole state, why must

its action be denounced as paternalism or some other supposed term of opprobrium?

The state actually is the father of the municipality and the municipality should wish to be proud of its parent even if, occasionally it must submit to discipline for the sake of its own welfare and that of its sister cities.

DISCUSSION

By J. F. Corbett, M. D.

In opening the discussion, I have been requested by Dr. Beard to tell something of the condition of the Minneapolis water-supply. In doing this, I shall divide the subject into three parts—first, the water of Minneapolis as it occurred in the past; second, the present condition of the water; and third, the water of the future.

Up to February, 1910, the water was derived from the Mississippi River and delivered to the consumers in the raw state. During this period of time there existed several serious drawbacks to the city water, the most apparent of these being the color. During the past ten years there has been a constant decrease in the color of the water. This, as records show, is probably due to the decrease in the logging industry and increase in the amount of swamp drainage. The color was found to be due to vegetable stain that could be readily removed by the use of alum but could not be filtered out in any mechanical way. The turbidity of the Mississippi River water consisted of clay and suspended organic material. The size of these suspended particles varied greatly in different seasons. In the winter there was practically no turbidity of any character, while in the summer there were large size particles of vegetable and animal matter that could be recognized with the naked eye. The large size of the particles did not materially raise the turbidity of the water as measured by any of our standard solutions, but presented great difficulty in the chemical steriliza-

DISCUSSION

By Robert Follansbee

This discussion of the water supplies of the state at this time is very opportune as the flow for this year is lower than it has been for many years and the low water flow is the most important period for water supplies used for domestic purposes, on account of the percentage of sewage, factory wastes, and other injurious matter being higher than at other times. To show the extreme low flow that has characterized the streams this year, a few comparisons are given which are taken chiefly from records compiled by the U. S. Geological Survey acting in co-operation with the state.

COMPARISONS OF FLOW

Records of flow of Ottertail River have been maintained since 1899, and these records show that prior to this year the flow has rarely fallen below 100 cubic feet per second. This year it has fallen to 16 second-feet, with a mean flow for an entire month of 33 second-feet. On Red Lake River where records have been maintained since 1901, the mean flow has very seldom been below 500 second feet, while this year it has reached 170, with a mean flow for a month of 300 second-feet. The Minnesota River near its mouth has fallen to 240 second-feet with a monthly mean of 254. The lowest monthly flow previously has rarely been less than 500 second-feet. Owing to the operation of the reservoir system on its headwaters the flow of the Mississippi during the summer and fall has not been as low as on the other streams, but

now that the supply from that source has been shut off, it has fallen to a figure only approximated by the mid-winter flow of two or three years. Another example of the extreme low flow for this year is seen in the discharge of the upper Rum River which is the outlet of Mille Lac Lake. The normal low water for this river is about 65 second-feet. This last summer the mean flow for an entire month has been less than 6 second-feet.

OTHER IMPORTANT PROBLEMS

The discussion of the use of water for municipal supply while the most important is only one problem in connection with the water resources of the state. Other problems are water power, navigation, outlets for drainage systems, and flood control and prevention. To show the importance of water power it may be stated that investigations carried on by the U. S. Geological Survey in co-operation with the state show that the developed and undeveloped water powers of Minnesota are about 500,000 H. P. (which can be considerably increased by regulating the flow) and that the average developed power is 113,000 leaving nearly 400,000 H. P. undeveloped.

To show the importance of the flood prevention problem it is only necessary to call attention to the disastrous flood of 1908 in the Minnesota River Valley when it was estimated that damage amounting to $1,000,000 was done. While this was the most serious flood of recent years, there have been other floods in that section in the past decade. There have also been serious floods on the Chippewa, Long Prairie, Leaf, Red, and other rivers in different parts of the state.

Minnesota is one of the leaders in the work of reclaiming its wet lands and the drainage of hundreds of thousands of acres will affect the regimen of the rivers to which these reclaimed lands are tributary.

NEED OF STATE CONTROL

Prof. Bass in his able paper has emphasized the necessity for state control of its waters, and the brief outline just given shows that the problems connected with the streams of the state are extremely important. Furthermore the nature of the various problems is so complex and far reaching, that it is impossible for any authority short of the state, to deal satisfactorily with it. As ex-president Roosevelt has said, a river cannot be treated in sections or with one use in view, but must be treated as a unit, in order that the various uses in the different sections may be so co-ordinated as to afford the greatest use to the largest number of people.

As an illustration of the way other states are treating this problem of the control of the water resources, it may be stated that New York, New Jersey and Pennsylvania in the east, and Oregon, Colorado, Utah, and many of the western states have state organizations to whom are referred applications for the use of water. If the state is satisfied that the interest and welfare of the people will be safeguarded, the use is allowed. Other states like Wisconsin and Maine, are considering the problem, and the last session of the Minnesota legislature authorized an investigation of the water resources with a view to enacting future legislation looking to state control.

Fourth Session

WORKMEN'S COMPENSATION

THE EVILS OF THE PRESENT SYSTEM OF EMPLOYER'S LIABILITY

By W. E. McEwen

Employes injured in industry in America must obtain what compensation they can under Employers' Liability Laws. The basic principle of these laws is the liability of the employer to the workmen for all injuries received by the latter on account of the employer's negligence. Conversely the employer is exempted from liability when not at fault. Stated in a different manner, the law imposes upon the employer the obligation to furnish his employe with a safe place in which to work and safe appliances wherewith to work, and he is held liable for injuries suffered by the employe unless he can show that the employe has contributed to the accident by his own negligence, or assumed the risk of the undertaking, or that the accident was the result of an act of a fellow-servant.

These principles originated at the time when industry was carried on in small shops and employers and employes stood in individual relations to each other. Steam and high power machines had not been introduced and the risk of injury was largely in the hands of the workmen. If a man was hurt it was presumably his own fault. The courts which considered the early cases were greatly impressed with the injustice of compelling the employer to pay for accidents which resulted from the nature of the work and for which he was not personally responsible, and so laid down the general rules that the workmen could not recover where the accident

was due to the fault of no one in particular, to the fault of a fellow workman, to the fault of the person injured, or to the fault of the injured as well as of the employer. They declared that the workmen assumed the risks of the industry and that if the employer exercised reasonable care to provide a workman a safe place to work and safe tools and materials with which to work he was devoid of liability.

The introduction of power machinery and corporate industry have since entirely changed the workmen's industrial environment. The domestic shop was a relatively safe place to be in, the modern factory is a relatively dangerous one.

The contrast is well illustrated by an examination of the workmen's relation to his fellow workmen under the two sets of conditions. In the early day but few men worked in an establishment. Hand tools made them relatively independent of each other's actions. Even when working co-operatively little opportunity was given for mutual injury. Carlessness on the part of one was easily detected and stopped by others. Protests to the employer against the carelessness of fellow workmen were easy.

Today power machinery brings all of the workmen in an establishment into close industrial relations and an error or carelessness on the part of a man in one part of an establishment often results in death or injury to those in other parts. At a certain coal mine four miners were descending in a cage when it suddenly dropped to the bottom of the shaft. Investigation revealed that the man in charge of the cage hoist had left his machinery in charge of a boy while he went to get a drink of water. His carlessness very nearly cost four men their lives. None of those men were in a position to detect and prevent the carelessness, but if they had been killed or permanently disabled none of them could have obtain-

ed redress. Industry has changed; the law has remained the same. Eighteenth century rules of negligence are applied to twentieth century industrial conditions. The workman bears the burden, both physical and financial, of the hazards of modern industry.

What is industry's debt to the men and women who are killed, or maimed and crippled through the fault of no one, and by a mere assumption of the risk of the industry?

We sit in comfort before a brilliant coal fire on a winter's evening. As the consuming heat gradually turns the coal into ashes we seldom give a thought to the human life it required to carry the coal from the bowels of the earth. Yet nearly 12,000 men sacrifice their lives and limbs annually in the coal industry.

In computing the cost of the coal we consume the dealer tacks on every item of expense such as the wages paid to miners, railroad freight, loss from shrinkage, taxes, insurance of every character, interest on money invested, depreciation of machinery, original cost of exploration, operators,' wholesalers,' and retailers' profits; everything is charged up except the human lives that were sacrificed in facing the perils of the industry.

An engineer on a railroad takes out a limited express. It speeds across the continent like a meteor. Before him are the red and green lights which tell in the language of the railroad corporation that the track is clear. With the daring man at the throttle everything depends upon the care and vigilance of his fellow servants on the railroad. He has made a number of trips successfully, and so he soon learns to rely upon the men ahead of him.

Then when it is least expected, through some unknown cause, and the fault of nobody; possibly by an act of God or the elements the train leaves the track and is dashed into the ditch. An investigation is made.

The railroad company is exonerated because its negligence cannot be proven. The verdict is that the accident was due solely to the hazard of the industry.

But in the wreck it is found that the engine is badly demolished, and the brave engineer is severely injured. Then the call is hurriedly made for a relief train. There is a speedy response. An ambulance waits at the next station to carry the injured engineer to the hospital. There he is obliged to lay suffering his own pain, deep in his own anguish. At home there is the worry and the suspense of loved ones, and the earnest prayer goes up that a husband and father may soon be restored to them.

Weeks pass, strength returns, and the injured man hops to his home on crutches, on one leg instead of two. A committee greets him from the Brotherhood of Locomotive Engineers, and turns over some fraternal insurance money; not very much, but usually a sum equal to the amount of a mortgage on the ordinary home, and yet large enough to bring just a little sunshine into the hearts of a sad and sorrowful family.

But what of the future, when the insurance money is spent? His job is gone, for railroad companies have no use for men with but one leg. They scarcely use them on railroad crossings as watchmen any more, and if they have any jobs for such cripples they are reserved for the men injured through the negligence of the railroad company, and the job is parcelled out in lieu of a lawsuit. This engineer, however, cannot recover under a lawsuit for the railroad company cannot be proven negligent.

Let us for the moment return to the demolished railroad engine, laying upon its side with its twisted steel, its boiler jacket dented and crushed, and its cab rent into splinters. Along comes the wrecking crew of the railroad company. A great steel arm is extended out over the track; heavy chains are fastened about the

wreck, and then there is the grinding of derrick wheels, the puffing of steam from the wrecking car, and gradually the old engine is lifted back on the track.

The railroad shop is the hospital for injured locomotives. Here the wrecked engine is taken. Machinists, boilermakers and other mechanics are put to work, the twisted steel is straightened out, a new cab is built, and then with a fresh coat of paint the old engine is sent out on the road again puffing and panting to earn dollars for the railroad corporation. The efficiency of the machine is restored, that of the man is destroyed, and no compensation is given him for his loss.

I hold that it is as much the duty of industry to care and provide for the support of its human wreckage as it is to care for the wear and tear of its machinery.

It is said that but 11 per cent of the men who are injured in industry receive any compensation whatever. The other 89 per cent must rely upon their own savings, the little insurance they can afford to carry from their meager wages, or the charity of the public.

Under the present system the injured cannot recover unless it can be proven that the employer was negligent, and the burden of proof is upon the injured. It is always difficult for the workman to prove his employer's negligence because the injured man must depend upon the testimony of his fellow employes whose jobs are in jeopardy if they take sides against the employer. Thus, the present system breeds perjury, and puts it at a premium in our civil courts where personal injury cases are tried. The employers of Minnesota in their accident reports to the bureau of labor ascribe 61 per cent of the accidents that happen in their shops to the hazard of the industry.

When one-half or two-thirds of the accidents are not due to personal negligence at all, how can a legal system based upon the theory of negligence meet the

needs of the economic situation? And what justice can there be in a legal system that frees employers of financial responsibility except when the accident can be directly traced to their negligence and theirs only, but makes the workmen bear this economic loss occasioned by all other accidents, whether caused by their own negligence, by that of their fellow workmen, or by no one's negligence. Employers' Liability is fundamentally unjust in its distribution of accident burdens. It protects the employer against financial loss when he is not to blame, but makes the workingman bear financial loss whether he is to blame or not.

In its practical operations Employers' Liability develops evils that compel the employer to condemn it equally with the workmen. Most important of these is its wastefulness. Though the rules of negligence exempt the employer from liability in probably 85 cases out of 100 they do not exempt him from suit. The workman can attempt to collect damages for any or all injuries and the employer is frequently put to great expense defending suits in which the workman had but the slightest chance to recover. In most cases where the workman is victorious the decisions of the juries are utterly inconsistent and capricious. The employers cannot foresee what their accident liabilities for any given period are apt to be. They may be sufficient to bankrupt them. A case came to the attention of the Bureau of Labor in which an employer had to arrange to pay the damages assessed against him by a court on account of an injury in annual installments, in order to prevent the complete annihiliation of his capital.

It was just such situations as this that created the necessity for employers' liability companies, which now make definite and certain the employers' accident burden. One of these companies says in speaking of its functions: "A trifling injury to a workman may involve the employ-

er in a lawsuit of a very troublesome nature or necessitate his compromising the matter at a serious cost. With a view to relieving employers of such liability—it (the insurance company)—issues policies indemnifying employers against any compensation or damages which they may be required to pay as the result of legal proceedings, or which, with the concurrence of the insurance corporation, the employers may agree to pay in respect to accidents to workmen. This system of insurance must afford inestimable relief to employers of all trouble and anxiety attached to accidents of their employes, and they are able to determine exactly their yearly expenses in respect to such casualties."

The employers say, "that without such insurance, their credit might be hoplessly compromised, that a certain class of lawyers, known as 'ambulance chasers' lurk about the neighborhood of works where accidents are frequent, in the hope of securing clients by offering their service without hope of fee unless a suit is won for the poor plaintiff, in which case the lawyer takes the lion's share of the award, while the workman receives a paltry sum. In sheer self-defense they resort to the insurance company for protection."

As a result of the necessity of carrying liability insurance most of what the employers spend on account of injuries to workmen goes to others than the injured. The courts in Minnesota seem to have construed the employers' liability more widely than have the courts of some other states. In Massachusetts, Illinois, New York and Wisconsin, the liability companies paid from 32 to 35 per cent of what they received from the employers in premiums between 1903 and 1907 to the workmen in compensation. During the same years the companies paid 58 per cent of their premiums in Minnesota. In 1908 they paid 68 per cent, and in 1909, 76 per cent.

William Harde, in Everybody's in November, 1908,

claims that in eleven years the employers of labor in the United States paid over $99,000,000 as premium for employers' liability insurance to protect themselves against law suits. Of this amount, but $30,000,000 were paid in claims to the injured workmen. The New York Bureau of Labor compiled statistics for the year 1906, covering employers carrying liability insurance in that state, and it was found that there were paid in premiums for the single year approximately $4,381,634, of which but $1,400,000 were paid to the side of the injured workmen.

From these figures it can be seen that but one-third of the money which the New York employers of labor pay for liability insurance reaches the injured workmen. This is not quite stating it correctly, for the injured workmen from the amount here given must pay legal expenses, which amount to at least one-half of the amount received. Thus it will be seen that of every dollar paid for insurance by the employers of labor, not more than 20 cents eventually gets into the pockets of the injured workmen. There is a waste then of approximately 80 per cent under the present system.

In addition to this wastage there is the exceedingly large expense to the state of employing the time of courts and juries trying law suits growing out of personal injury cases. It costs New York City alone $3,600,000 each year to try negligence or accidents cases but not one cent of this large sum is of any direct aid or compensation to the victim of the accident. Neither does its expenditure by the taxpayer put any proportionate sum into the hands of the workmen. The $3,600,000 spent by the taxpayers of New York City to maintain courts to try personal injury cases resulted in putting only $900,000 of compensation into the hands of the injured persons.

The cost to the people of Minnesota in trying personal injury cases is not definitely known. Statistics on this

subject are now being gathered by the Bureau of Labor. However, it is estimated that it costs at least $100 a day to try personal injury cases in Hennepin county. It is also estimated that twenty-five per cent of the cases in St. Louis county are due to claims for damages growing out of personal injuries. It is safe to add that this class of cases occupies considerably more than twenty-five per cent of the time of the courts.

The more hazardous industries seldom carry Employers' Liability insurance. Even with them there is a wastage that might be eliminated. An attorney for a large railroad corporation admitted in the State Capitol two years ago that in one case tried in Minneapolis it cost his client $6,000 for expert testimony to head off a $5,000 verdict. Scarcely 50 per cent of the money paid by the United States Steel Corporation in Northern Minnesota in settlement of claims growing out of personal injuries reaches the men who were injured.

Much waste also occurs after the money leaves the possession of the employers or the employers' liability company. The injured workman is compelled to pay one-half or more of what he received to the lawyers who conducted his suits. What remains to him is frequently but an insignificant sum. This cruel system of the present offers too great an opportunity for speculation on the mangled bones and crushed lives of the working classes. Too many men who have not fallen from scaffolds or been ground in the wheels of industry are getting altogether too much, and the injured laborers are getting altogether too little of the money paid by employers on account of accidents. And yet no one can rightfully blame the personal injury attorney for exacting his large fee or the insurance company for asking big profits for both are engaged in a game of chance with many uncertainties, surprises and disappointments.

Another fundamental evil of employers' liability, is

its slowness and uncertainty. The injured, or the widowed and orphaned, must bring suit for damages and wait for the processes of the law to work out their salvation. They are ignorant of the law and inexperienced in its procedure. Their demands for damages imperils their future livelihood. At best their chances of success are a mere gamble. The employers and liability companies sued, fight entirely on defense, with four or five possible causes of the accident as loopholes through which to escape. If they can maintain the hazard of the industry, the carelessness of a fellow workman, the carelessness of the workman injured, or his contributary negligence, they win. Wealth, knowledge of the law, and experience in such cases are all on their side. They can carry the case from court to court until, wearied and exhausted, the workman gives up in despair, or they escape through technicalities.

The failure of the employers' liability to compensate injured workmen is not the fault of the employer, the insurance company or the lawyer. It is the fault of the system which places the question of compensation upon the disputable basis of negligence makes the mode of collection a legal suit, and leaves the amount of compensation to the caprice of a jury. Liability insurance, on the one side, is but the necessary defense of the employer, and the personal injury attorney on the other but the necessary protection of the workman. It is the fault of the legally prescribed method of compensation that most of what the employers spend on account of accidents is wasted.

Because of the failure of the present system to properly and adequately compensate workingmen for injuries suffered at their employments the public is put to much expense, not usually considered in treating this question. Hospitals must be maintained; charitable institutions financed; relief societies supplied; and individual citizens

are greatly harassed by private charity as a result. Oh, what a sad blot this is on our boasted civilization!

At the present time our nation is greatly aroused over the question of conserving our natural resources. We have suddenly become aware of the fact that our mineral products are being wasted, our forests destroyed, and our water power left undeveloped. But what natural resource is of as much importance to a nation as the health, happiness and intelligence of its citizens?

In every phase of our commercial life except in this one, experts are using all of the scientific knowledge they possess in attempting to ascertain how refuse may be turned into profits. Not so very long ago in the meat industry the offal was cast aside as worthless. Today there is not a morsel in a carcass of beef but what is utilized. Science and economy have made it possible for the stockholders in the great packing companies to accumulate fortunes.

When the art of refining crude petroleum was first discovered nothing was known of the value of the waste substance after the refined oil was extracted. Now there is practically no waste. Science has found a way of utilizing every property of crude oil, and a half a hundred or more marketable by-products of petroleum is the result. The conservation of the wastes in petroleum manufactured by the Standard Oil Company gave it an advantage over its competitors and made it possible for that corporation to become the most profitable industrial institution in the world.

The United States Steel Corporation stands out boldly as the greatest achievement of modern industry. It is scientifically the most perfectly organized of all the great commercial and industrial institutions. By eliminating the wastes that formerly obtained the production if iron and steel has transformed what was a fluctuating and uncertain business into one of absolute surety, and own-

ers of preferred stock in this great corporation find their investments as secure as government bonds and the returns almost twice as remunerative.

Where there has been a wastage that could be turned into increased dividends capital has lost neither time nor opportunity in diverting it into profit-making channels. The existing wastage under our system of Employers' Liability presents a different aspect for its conservation would mean a wide distribution of benefits among a greater number of injured workingmen, so there is little in it to attract that kind of corporation stockholders whose eyes are solely riveted upon immediate dividends. Nevertheless it has been the experience of Germany and other foreign countries that the prevention of accidents and proper compensation for injuries have in the long run resulted in increased profits to the manufacturers themselves.

Just and adequate compensation to workingmen for injury to health or body by industry is not purely an industrial question. It is society's problem for, beyond the misery and suffering of labor and labor's family, the real burden falls upon society.

The cost of liability insurance and lawsuits are charged by the employer to the cost of production, and the consumer pays for it in the end. The people support the courts by taxation; here all share in the expense. This is also true of the almshouses, where, the Chicago Daily News declares, 10 per cent of our crippled population are ultimately forced. A goodly number, whose pride prevents them from seeking refuge in the poor house, are aided by private charity. All of them must be fed in some way, for a Christian nation cannot permit even the most unfortunate of cripples to starve. So it can be admitted as an economic truth that the final burden of cost falls upon society.

Every person who has studied this question from

any stand-point cannot help but admit that the law of Employers' Liability, based upon negligence, has outlived its usefulness. It should have been discarded by legislators and courts with the removal of the primitive tools of production from our industries. Twenty-three foreign countries have enacted laws based upon the compensatory idea. We, in the United States, have been so busily occupied with the commercial side of our industrial life that we have not had the time to consider its human aspect. However, a new order of thought is abroad in the land, and there seems to be a general demand from everywhere for the adoption of a proper system of compensation for the human wrecks cast upon industry's scrap piles by the dangers of their employments.

The problem is more difficult of solution in this country than in other countries for two chief reasons; first, because of obstacles that present themselves in our state and federal constitutions, which at times seem unsurmountable; second, ours is a dual form of government in which the federal government is denied the right to legislate in matters pertaining to intrastate affairs.

Other countries, in endeavoring to solve the problem of justly caring for industry's toll of injured workmen, had no such barriers to contend with. An act of the British parliament applies to the entire United Kingdom. Constitutional objections are surmounted to suit the exigencies of a condition. This is also true of other European countries.

But in the United States each state is obliged to legislate for itself, except in matters of interstate commerce. I have said that but eleven per cent of those injured in industry were compensated. A compensation act must necessarily apply to every person injured at his work. In spite of the fact that there is an im-

mense waste under the present system, which might be eliminated under a scheme of compensation, a general act changing the basis of recovery from negligence to that of the risk of the industry, and providing for adequate and just compensation, would considerably increase the burden now primarily borne by industry. Here is where danger abides. If one state should pass a comprehensive compensatory act, and its neighboring state should fail to do so, the increased charge against industries would tend to drive them from, or keep them out of the state. In these days of close margins employers in a given state cannot be expected to charge very much more against the cost of production than is charged by their competitors in an adjoining state. If uniform laws could be passed in all of the states simultaneously, an ideal solution of the vexed problem could be expected.

There are however some industries, such as mining and railroading, that would not be materially effected by purely local legislation, irrespective of what other states failed to do. But legislation of this character must be general to be valid. It is extremely doubtful whether one rule of liability can be prescribed for the mining industry, and another rule of liability for manufacturers, for no other reason than that the latter is subject to keener competitive conditions.

So the ideal solution of this great problem, in view of the many obstacles presented, cannot be expected for some time.

I believe that the true solution of this problem can only be had by the adoption of a scheme of state insurance that would eliminate all the factors now thriving upon Employers' Liability. I would tax every industry within the State of Minnesota according to its hazard and the number of accidents which annually occur therein, penalizing such individual industries whose owners

proved to be negligent in the matter of providing means for the prevention of accidents. I would have adopted a scheme of compensation that would provide for the payment of every person injured while at his work, such payment to extend over the entire period of disability. When death occurs as a result of an accident, I would have the compensation paid to the immediate dependents during the entire period of their dependency. Only under such a system can exact justice be meted out to the injured workingman with the least burden upon industry, for under such a system private insurance companies, attorneys and court trials would be eliminated.

However, I recognize that under the provisions of our constitution state insurance cannot be had at this time. Even if the next legislature submitted a proposed amendment to the people of the state providing for state insurance, it would require from five to seven years to inaugurate the system. Any kind of compensation law would be better than Employers' Liability based upon negligence. Therefore, to accomplish immediate and practical results, it will be necessary to utilize such machinery as now exists and build our new structure around it. True progress will consist in the equilibrium between obtaining the greatest benefits for the largest number of injured workingmen and affecting the least injury to industry.

It is pretty generally conceded in these latter days that industry should bear all the burden of its accidents. However, it has been advocated by some that in establishing the principle of compensation covering all industrial accidents, because of the political division in our form of government, and the improbability of securing uniform legislation in all of the states, that both employers and employees should contribute to the fund out of which should be paid the claims arising from personal

injuries, without a lawsuit and with no expense to the injured for collection. Others held that the employee should contribute to the fund for the purpose of giving him an interest in its management, and for the further purpose of having him act with his fellow employees in preventing accidents, particularly that kind which is due to the negligence of the employee or his fellow servant.

Early in the study of this question I believed that labor might agree to contribute, but after visiting in foreign countries and obtaining more information on this question I am satisfied that the laborer who faces the perils of the industry, suffers the pains from injury, the loss in wages, between the amount he was earning and the amount of his compensation, and a multiplicity of other things, has contributed his share. I would much rather have the laborer accept a lower compensation, all of which is to be paid by industry, than have him contribute to the fund that would pay a larger compensation. It will be much easier to induce the legislature to increase the compensation as the compensatory idea develops, than it would be to influence a legislature to remove the additional burden placed upon labor in the matter of financial contribution, after it shall have once been written into law.

Society's interest in a law properly compensating those injured in industry is of three kinds. It is interested in preventing the injured from becoming objects of charity, in having their children properly educated for American citizenship, and in saving the millions of dollars at present spent in maintaining the courts where personal injury cases are tried.

In addition to changing the basis of recovery from negligence to the risk of the injury, the method of paying compensation could also be changed. Under Employers' Liability claims are paid in lump sums. The persons receiving them are usually unaccustomed to the

handling of large amounts of money, and because of this inexperience the money is frequently dissipated and the injured falls upon society for support. A model system of compensation would provide for installment payments which would be sure and certain, coming just as regular as a pay day. The virtue in this is beyond question.

There is but one logical conclusion to this whole question; there must be compensation to the workmen for all injuries received in the course of his employment and such compensation must be deemed an essential part of his wages. It is amazing that our country has been so slow in perceiving how grievous and unjust the law has been which attempted to impose this burden of industrial accidents upon labor; slow to realize how important the attempt has been and slow to profit by the instructive examples which foreign countries have exhibited to us for twenty-five years.

We have been indulging in illusions. We have looked on complacently, persuading ourselves that we have compelled the laboring man to assume the risks and to provide for future emergencies, ignoring the manifest fact that the burden of such risks has really fallen upon society.

We hear much of industrial disadvantages, and the beneficient ideas of philanthropy; but the workman who suffers wrongfully from unfair industrial conditions is not seeking the dole of charity, but simply justice.

Viewed in its merely commercial aspects, a nation cannot afford unnecessary waste of life or limbs. It has been estimated that it costs fifteen hundred dollars to rear the boy until he reaches the age for work. He becomes too costly a piece of mechanism to be exposed to needless hazards, or to wasteful methods in industry.

In a material as well as in an ethical sense, the life, health and well-being of a nation's workmen are proper

subjects of a state's solicitude. Considerations of economy and philanthropy concur in demanding, not only that industrial accidents shall be guarded against, but that their consequences unjust to the victim shall, so far as practicable be averted.

EMPLOYER'S LIABILITY AND WORKMEN'S COMPENSATION ACTS

By George M. Gillette

I much regret that you did not ask me to write and read this paper two years ago instead of now. At that time I had considerable confidence in my knowledge, and was more certain of my opinions. Two years of added study and careful investigation have caused me to gain some conception of the magnitude of the subject, of the difficulties to be encountered, and the uncertainties with which we have to contend.

You asked me to speak on the topic of "Workingmen's Compensation Acts in Minnesota from the Employer's Standpoint." I can hardly agree to this in its entirety. One who would approach this subject and deal with it from any single standpoint would be entirely unfitted to frame fair legislation. The only interest which the employer has in the subject which is different from the interest of any member of society, lies in that part of the cost of the operation of the act which he is unable to charge as a part of the cost of his product and thereby pass on to the consumer and general public. Fortunately, at the very outset of the discussion in this state, it was distinctly agreed between the representatives of the employers and employes that the legislation which should be proposed must not impose undue burdens on the industries of the state. I shall therefore deal with the subject of cost only in the way of naming and defining some of the restrictions which I believe must be incorporated into a compensation act to bring

the cost within limits which can be borne by the industries of our state, until such time as forty-seven other states shall have enacted similar legislation.

Some of the other restrictions and provisions which I shall suggest as necessary to be incorporated into a law will be merely for the purpose of making the law just and equitable and as free as possible from the abuses which are apt to flow from this kind of legislation.

As an employer, I do not hesitate to say that, employers as a class are as mindful of the welfare of the working man and as deeply anxious for the safety of the workman and the protection of his life and limb as any other member of society, and I think if the real facts were disclosed, it would be found that the employers themselves are contributing more than any other class to alleviate the misfortunes of those who work for them. The muckraker has an easy job; it is not difficult to find an instance or several of them, of misfortune and perhaps of injustice. A facile pen may easily portray a horrid picture. The politician on the stump or in office can easily decry the conditions that exist and make the workman and society generally feel that a grave injustice is being done. Neither magazine writers, sociologists, nor politicians, however, have been fertile in suggestions as to remedy. In some cases, however, they have lightly suggested the enactment of workmen's compensation acts as a panacea for all industrial ills. Their investigations, however, have only been skin deep and they have seemed to have no conception of the difficulties to be encountered in the framing and enactment of such laws. They tell us that America and Turkey stand out practically alone as the only nations of pretended civilization which do not have such laws. They seem to forget that America differs from the whole family of nations in many as equally striking respects. In starting to discuss the question, they become immediately

oblivious to the fact that America has constitutions both federal and state. They pass this by as a matter lightly to be regarded among friends and when it comes to the framing of the act itself, most writers have failed to study the varying provisions of the foreign laws and to comprehend the radical differences in principle and administration which exist between them.

They seem to forget that in the enactment of this kind of legislation in this land of ours, it might be necessary to contravene constitutions which have heretofore been regarded as the bulwark of our liberties and our rights. They fail to consider the trend of this kind of legislation, and to seriously consider and weigh whether the benefits and advantages which would flow from this species of laws would be outweighed by the danger of injecting into our system a paternalistic and socialistic feature from which we have heretofore been comparatively free.

Personally, I believe, that the opening up of this class of legislation is far more radical than the new nationalism being preached by the illustrious American now suffering from lockjaw. I merely call attention to it, not because I am opposed to it, but that you too may consider it. I have come to the conclusion that the enactment of compensation laws is advisable, notwithstanding the fact that it is a radical departure from precedent because it seems to me that workingmens' compensation laws properly framed and intending to do equal justice will probably do more good than the breaking down of precedents will do harm. Justifying myself thus, therefore, for favoring the enactment of such laws, may I trespass on your patience to name some of the provisions and characteristics of a workingmens' compensation act which to my mind should be incorporated into such a law and some of my reasons therefor?

This scientific body must pardon me for my inverted reasoning, but I wish to get before your minds at the outset one of the great difficulties with which this Commission has to contend. The representatives of the employers and the employes and the Bar association, in its petition to Governor Johnson asking for a Commission to frame this legislation, asked also that such legislation should be so framed that it should not impose an unjust burden on the industries of the state. Our Commission was appointed under that understanding and is pledged to carry out that purpose. My own conclusion reached after careful study and careful investigation both in this country and in Europe, is that it will be impossible to frame an act in a fair degree satisfactory to the employers and providing reasonably adequate compensation to injured employes or their dependants, and keep the resultant cost to the industries even within the present cost of employers' liability insurance.

Based on incorporating into the law the provisions and restrictions which I shall enumerate below, my belief is that as an insurance or insurable proposition, it will cost the employers of Minnesota, varying inversely according to the degree of hazard from one and one-half to six times to insure the liability under such an act as it is now costing to insure even under our existing liability law.

My opinion is fortified by the estimates received by me from Mr. J. Stanley Brown, General Manager of the Employers' Liability Company of London, Mr. F. Norri-Miller, Manager of the General Accident Company of Perth, Mr. Armstrong of the Ocean, and the best authorities whom I interviewed on the other side. It is further fortified by a comparison of cost of our present rates of insurance with the rates being paid by employers on the other side. I wish to reason backward, therefore, from this conclusion to show some of the re-

strictions which should be incorporated in the act in order to keep it within striking distance of the present cost.

I shall not deal with the constitutional difficulties. These have been entrusted to Mr. Mercer, the lawyer of our Commission, and I understand that he has solved them all to his own entire satisfaction. His solution only awaits the ratification from the bench. Many of the restrictions which I shall name involve constitutional problems, but I shall assume that they have been or can be solved, and that the state of Minnesota can enact, through its police powers, a law with the suggested provisions and restrictions.

First. The law must provide for a single liability. By that I mean the liability only created by the act itself, and the right to recover at common law or under existing liability statutes must be abolished. This postulate would seem to need little argument. Only one nation in the world retains a dual liability. Great Britain did not repeal the common law nor abolish her liability acts, and I am frank to say that the double liability has made little difference there. The amount recovered at common law or under the liability act in few cases exceeded the amount of the compensations named in the act of 1907, the manager of one of the largest liability companies in Great Britain told me that £800 was the largest verdict he ever knew of a workman recovering. In view of this and in view of the costs which the plaintiff would necessarily have to bear, there has been little temptation to sue for a common law recovery in Great Britain since the compensation act was passed. In Amercia, however, the conditions are diametrically different. Litigation has been rife and the occasional exceptionally large verdict stands as a continual temptation to the injured workman to speculate, and the speculative verdict, abetted by the interests of the ambulance

chaser as compared with the moderate but assured compensations named in the law, would in my opinion still throw a large number of cases into our courts. This contingent and possible liability, the cost of litigating the suits, are all elements of cost, and must either be deducted from the scale of compensations or added to the employer's burden.

One of the principal arguments for the enactment of compensation law is that it may do away with litigation. If this purpose is honest, then the foundation for the litigation must be destroyed and the causes of such actions abolished.

Second. The law should cover all employments. The muckraking magazine writer, the philanthropists and the sociologists should be made as much liable to their servants for the accidents which they sustain arising out of and during the course of their employment as those engaged in larger enterprises, and those who seek to carry on the necessary industries of the state. The extension of the act to cover all classes of employment will act as a strong safeguard to protect our industries against future drastic class legislation.

Third. All industries should be covered irrespective of negligence. The theory of a compensation law is that it abolishes fault as a basis for recovery. The theory is that labor is necessary, that accidents are the concomitants of labor, that therefore if accidents necessarily flow from the performance of labor, they should in a degree be compensated by the beneficiaries and charged as a part of the cost of production. The stronger argument is that on our present theory of fault, it costs too much money to find whose fault it was, and that the money might be distributed in a better manner than at present and in a method to accomplish more good.

Fourth. The scale of compensation. Certainly no higher scale of compensations can be paid than that pro-

vided in the English law which is based on 50% of wages during period of disability. Germany pays a little larger percentage, but pays nothing out of the accident fund for the first thirteen weeks of disability from accident. In my own opinion, the highest scale which can be paid is 50% of the impairment of wages with a maximum of $10 per week and a minimum of $5 per week, for male employes or if wages are less than $5 per week, then full wages and that these payments cannot, in the case of either permanent or partial, temporary or permanent disability, continue for longer than three hundred weeks, and that the same limits must apply in case the accident is fatal. I believe that the dependants should be limited to direct descendants or ascendants or at least to those related within the second degree. I should like to see a varying scale of compensations depending on the number of dependent children. I believe that compensations should not be paid to aliens residing outside the country.

While the above scale of compensations may be in some cases insufficient, I am satisfied that considering the fact that under our existing system, but eleven injured people out of one hundred are compensated, and that under the theory of a compensation law, one hundred out of one hundred will be compensated, it will be absolutely impossible to compensate nine times as many as are compensated now and without this limitation keep the cost where our industries can live.

I am further satisfied after my investigations in England and my knowledge of conditions in this country, that if the compensations were larger, we would soon have a large idle class by reason of the fact that the injured workman would during his period of idleness, be receiving, through the compensation act and from the benefits of the benevolent orders to which he

belongs, as much or more than he was receiving before his injury.

Fifth. I believe that after every accident there should be a waiting period without compensation. My studies and investigations abroad convinced me that this is not only necessary but advisable. This waiting period must not be less than two weeks, preferably, I should make it three weeks, and in lieu of the compensation for the third week, I would have the employer furnish to the injured employe, during these first three weeks, free surgical, hospital and medical service if it can be done and keep the insurance within reasonable cost. The invariable experience abroad has been that where the compensation has dated back to the time of injury, it has induced malingering and it has increased the cost in a measure entirely disproportionate to the benefits received by the workman. In number, practically 50% of the petty injuries would disappear in the first two weeks. The cost of investigating these cases and making settlement with them is vastly greater than the benefits the workman would receive from these payments. But after we have provided as above that every person injured in any occupation shall receive some compensation, how are you going to pay it? The common ready answer is, "tax it on the industries." Let us see if this is entirely fair. Theoretically, we must admit that if it were possible for the employer to charge the cost against his product and pass it on in the selling price to the consumer, it would not seriously burden the industries, but Minnesota cannot do this except in non-competitive lines. Possibly in the construction of buildings, this might be true as this work must necessarily be done within the state, but how about the materials that are manufactured for those buildings within the state in competition with other manufacturers of the same class of materials resident without the state, or how about the vast line of manufacturers in Minnesota who sell their product in other

states in competition with the factories and work shops of other states? It simply cannot be justly and equitably done without imposing an undue burden on the industries of Minnesota until *every* state containing *every* factory competing with *every* industry in Minnesota has enacted a similar law.

But grant that in ten or fifteen years from now this has been done, would it then be fair, just and advisable that the whole cost should be assessed against the employer or the industry? I am one of those who believe it should not.

In the discussion of this whole subject, I have disliked the term "compensation." Strictly speaking, I am not in favor of a compensation act. There is no such thing as compensation for the loss of eye or hand or foot; there is no such thing as compensation for the loss of life of father, husband, or brother; there is no such thing as compensation as a measure for the suffering, the pain, and maybe the hunger which comes with industrial or even with other accidents. What I believe in, strictly speaking, is industrial insurance. It is true that I believe it must take the form of commonly accepted workmen's compensation acts, but in principle I believe it should be founded on the theory of mutual and protective insurance. This is the distinguishing feature between the English and the German law. All the other laws of Europe on this subject are modifications of these two. If the German experience should prove true in this country where 29.74% of the accidents are caused by the carelessness of the workman himself, 18% by the negligence of employers, 10% by the negligence of fellow-employes and 42% by the natural hazards of the industry, why should the employer, who caused only 18% of the accidents be made liable for all and the employes and fellow-employes, who caused 40% of the accidents be liable for none? I am satisfied that some

participation by the workmen in the cost of providing the fund out of which accidental injury should be paid for, will operate as it has in Germany, to reduce the number of accidents, to restrict malingering, and consequently, to reduce the cost.

I do not think the contribution from the workmen should be large. I would not suggest an amount exceeding 20%. This would probably amount to not to exceed 1% of wages on the average and in my judgment would operate to make workmen see that safety appliances which are provided are put to their proper use; that the simulation of injury is reduced to the minimum, and that care is exercised.

The argument is made that in the difference between full wages and the amount of compensation, the workman is already contributing. It is true that some workmen are, but on the average on a half wage scale, in my opinion they are not thereby contributing pro rata with fault nor contributing anything like a sufficient amount to compensate the 89% who would be cared for under a compensation law but who are receiving nothing now under our liability law. I therefore believe in an insurance plan. I believe it should be permissible for employers to substitute voluntary schemes providing compensations not less than those named in the law and approved by the proper state authority. I do not see how insurance can be provided by the state. The Minnesota courts have held that the state of Minnesota could not go into business. My ultimate idea would be mutual insurance administered jointly by employers and employes, the insurance funds to be provided in the major portion by the employers, in a minor portion by the employes; in the immediate future, however, I do not deem this practicable and think that the risks must for a time be carried by Old Line Insurance companies

admitted to do business within the state under carefully imposed restrictions.

I believe thoroughly in insurance of some kind, both from the employer's standpoint and from the standpoint of the employes as well. The employer must conduct his business on a law of averages; his risk must be averaged over a large area of time and payroll. He must have some way to safeguard his business so that a single accident injuring many employes would not cripple the larger employer nor ruin the small one. Insurance is absolutely essential to the employe in order that without question the compensations promised by the law will be paid to him in the day of his misfortunes.

The English law has nothing to do with insurance; it creates the liability against the employer and there it leaves him. In Great Britain, almost every risk is carried by a private insurance company. In Germany and Austria, the insurance is carried by compulsory mutual organizations of employers; in Norway, it is provided by the state; in Sweden it is elective as between private companies and the state; in Belgium and in France, the risks are divided between mutual and private companies and large uninsured risks. A serious difficulty is involved in insuring the risks created by a compensation law. To my mind, the establishment and preservation of proper reserves are absolutely essential. England does not require this, by law, but compels the private companies to make public the reserves which they maintain. The German mutual system is absolutely unsound and insolvent except by reason of its compulsion. No adequate reserve has been created with the result that the cost is constantly increasing and future generations in Germany will have to care for the deferred obligations arising from the industrial accidents of today. Dr. Zacher predicts that the cost in Germany will continue to increase from 1885 to 1960. While Austria, adopt-

ing as it did in a large measure the German system, attempted to improve upon it in this respect and establish proper reserves, the estimates of the reserves required fell far below what experience has shown necessary, and the Austrian insurance funds today are insolvent. France has levied a tax against practically all forms of employment and the Government becomes the insurer of the individual or the insurance company, and guarantees the payment of the deferred obligations. The experience in no line of insurance heretofore carried on in the United States affords a statistical basis upon which to determine either the cost of insurance of any proposed compensation act, or if the act should provide for annuity payments, there are no available statistics to determine the amount of reserve required to care for such deferred obligations. Any mutual insurance company of employers, therefore, which is organized today to insure against the operation of a compensation law would be entirely at sea either as to the amount of premiums to be charged on the various classes of risks or as to the amount of reserve that would be necessary in order to provide for deferred obligations.

I have thus purposely referred to the subject of insurance before coming to the method of payment, in order that you might more clearly understand me. Theoretically, I believe that the compensations should be paid in installments or annuities. It is true that if a limitation is placed upon the duration of these annuities that the measure of reserves can thereby be more nearly determined, yet by reason of our lack of statistical information as to costs, I am inclined to accept the suggestion of Dr. Zacher that during the first five years of the operation of our proposed law, lump sum settlements should be made, hoping that by that time we might acquire statistics by which could be determined the proper premiums to be charged for the varying haz-

ards, and the amount of reserves necessary, and that thereafter our law could be changed to comply with the method which I think we all will agree is better in principle.

I think there are ten commissions in existence in various states at this time investigating this subject. One commission only has reported a law and one legislature only has enacted one. I refer to the state of New York. I would not be discourteous to the New York commission; it was composed of most eminent and able men. Its members did most conscientious work, but the law has only been in operation since Sept. 1st, and already its defects have become apparent. The New York law is made applicable only to certain hazardous occupations. The double liability is retained; there is no contribution from the workmen; the limits of compensation do not vary greatly from those named above, but the cost of insuring under the new law has increased so greatly as to give the greatest dissatisfaction. As high as 14% of payroll is being charged to insure some risks. The mistakes of the New York law should serve a useful purpose in teaching us what to avoid.

Several commissions will propose measures to the forthcoming legislatures. A report will be made in January by the Minnesota commission. Our law has not as yet been framed. I feel that the members of the commission have done most conscientious work. They have availed themselves not only of all the information obtainable in this country, but each member has studied foreign laws and their operation and administration at home. The best posted men in Europe have been interviewed and consulted and with all, I think I may safely say that each member of the Commission feels that it is one of the most difficult and intricate problems ever submitted by a state to a commission for solution. I believe that each member of the commission is at-

tempting honestly to do that which is fair and right. Possibly Mr. McEwen and myself, each from our different viewpoints, has an unconscious bias. Mr. Mercer, of course, as a lawyer has no bias as he is retained by neither side.

Aside from the more prominent questions which I have referred to above, I might cite some minor details which must be covered in the bill, and which will give you some idea of the interminable minutiae of the act. For instance, define an accident. The term must be so defined as not to induce litigation. It must exclude diseases. Shall it be an injury received from an external object and must it display objective symptoms? What will you do with shock? This intangible injury is the source of an untold number of claims in Great Britain. What is an accident anyway? An English judge once brought a case of blood poisoning within the realm of a compensation act before the law included industrial diseases, holding that the accidental lighting of a bacillus upon a microscopic wound was the accident which produced the result. What will you do with accidents which would not be serious to a sound man, but aggravate weaknesses which are congenital? How would you safeguard the law so that it would not militate against the employment of older men or those who have physical imperfections? According to Mr. Holmes, Secretary of the Federation of Hosiery Workers of Great Britain, there are 150,000 men out of employment today who cannot get jobs because of over-age or physical defects. I believe this class should be allowed to contract out under certain conditions, but would you accept that theory? How would you administer the act? Simple, summary and inexpensive machinery should be provided, but exactly how would you arrange it?

And then the doctor question. I believe that if possible a doctor should be the arbiter regard-

ing questions of degree and duration of disability. May he be called in at the request of either party or must it be at the request of both parties as in the British law? Shall the employer pay for him and the employe choose him as is done in France where the ambulance chasing doctor has become a worse curse than the ambulance chasing lawyer of America? The law should provide for such reports of accidents and settlements for injuries as will in time afford the state full statistical data as to cost. How would you provide for this? Shall the insurance companies be obliged to report every accident which is reported to them and every settlement and sum which they pay? Shall private corporations and employers be obliged to do the same?

I come before you not to instruct you, but to ask your help. We have gathered what we could from old world experience but the most we have learned is of the effect of the law in its operation on human acts and on the human mind. We have studied the statistics of the old world, but their value is relative. American conditions and American institutions and American workmen are entirely unlike those of any of the nations of the old world. America has a larger number of accidents in proportion to the number of men employed than probably any foreign country. I am inclined to think that for a long time it will have. As long as it takes England or Scotland two years to put up a six-story building and most any of the continental countries practically as long, as long as the American work-shop employs a mixture of all the races having different customs, different methods and different habits of thought, as long as the national American impulse lasts to accomplish things within a reasonable time, until the state becomes more thorough in its department of factory inspection, until better safeguards are provided and men become willing to use them, I imagine we will continue to have

ance in Minnesota is higher than in most states. The loss ratio of the companies doing business in Minnesota was in 1910 about 68% of premium receipts against an average of about 35% in Massachusetts and New York. The rates in Minnesota are much higher than they have been in Massachusetts and New York. The companies report a loss of practically half a million dollars on the business written in 1910. Among the causes for this increased cost are the excessive number of accidents, the submission of questions to the jury which had heretofore been determined by the courts, the excessive verdicts granted by juries and probably last but not least, this very agitation and discussion in which I am now engaging.

The waste of our present system in the United States as a whole, is awful. In Minnesota it is not so bad as only approximately 30% of the money paid by employers has been absorbed by the companies in costs of administration and litigation, but in the amounts recovered by the injured there has been a great waste in distribution. Vast sums have gone to lawyers and we all know that any money which they receive is wasted. The cost to the general public in the administration of our courts is entirely out of proportion to the verdicts recovered. A careful examination of the files of all personal injury cases tried in Hennepin County for two years disclosed the fact that it cost Hennepin County more in court fees, jury fees and expenses than the total amount of the verdicts recovered. I yield to a change in our method largely to avoid this waste. In common with all employers, I should like to see the money which is expended go where it will do most to alleviate the burdens of those who are injured.

Do not hope for perfection in the law which your commission will present. Do not hope that it will entirely do away with litigation. A larger percentage of

cases are litigated under the German law than under our present liability system. Do not think equal justice will be done to all. This is not possible either under our constitutional limitations, nor under the restrictions which necessity imposes. Aid us with your suggestions and with your kindly criticism, and above all, we beg of you to believe that your commission has tried to do its duty as it saw its duty.

I repeat, do not hope for perfection in the law which will be proposed. I am modestly forced to admit that perfection would not be reached even if all my own ideas were adopted, as I do not expect them to be. Legislation is a compromise. Let us only hope that if the people of Minnesota decide that it is wise to abolish the established principles of freedom and individual responsibility, that they may substitute therefor something of unquestioned greater value.

DISCUSSION

By Fred L. Gray

I assume that I was invited to participate in this discussion with the expectation that I might have something to say regarding the attitude of the casualty companies toward compensation laws. While I am in no way empowered to speak for them, I can safely say that they will gladly welcome any sane, well devised measure calculated to more equitably and systematically compensate the victims of industrial accidents, especially if in the process some of their own very perplexing problems are simplified. On the other hand, the insurance companies would have good reason to deplore the enactment of any law which, owing to its legal defects or economic unsuitability would prove but a temporary makeshift and hinder rather than hasten a wise solution of the question. The insuring public, too, whose interests are paramount, should be even more anxious to see that what is done in this direction is done well, so that it will not soon have to be undone. The experience of certain other states is most instructive in this respect. Massachusetts has for several years had on her statute books a permissive act which has thus far been a dead letter. New York has a compensation law which was railroaded through in the closing hours of the last legislature as a sheer "trading" proposition and which, although now in operation less than four months, has already proven unsatisfactory to employer and employe alike. Ohio has recently abolished her defenses, to the gratification of the wage earners but to the great dis-

turbance of her business enterprises. The Wisconsin commission is laboring with an ingenious but complex measure designed to whip the constitution of that state around the stump, but its practical workability remains to be demonstrated. The electorate of Oregon has voted in favor of a populistic measure well calculated to drive the industries from the state, while Washington is considering one equally well calculated to drive out labor. In short, while there is substantial agreement as to the ailment, there bids fair to be as many experimental remedies as there are states in the Union. Why? Simply because no other legislative problem has arisen in this generation which in its small details no less than in its possible far-reaching effects on our institutions has proven so puzzling to the lawmakers. There is, of course, a solution, and a correct one, but I greatly doubt if it will be hit upon in the Year of Grace 1911, either in this or any other state. Public sentiment has been aroused to the admitted defects of the present system but has not yet crystalized as to the best remedy therefor. In this, as in all great reforms, the millennium is proving elusive. While I by no means advocate procrastination, I do firmly believe that Minnesota would be in a vastly better position to legislate wisely on this matter two years hence than now, partly as a result of the information to be gained in the meantime from observing the experiments of other states and partly from further research and study by our own commission, which in my judgment should be made a permanent commission until the matter is finally disposed of.

While we are seeking a perfect method of compensation for industrial accidents, let us not forget the means already at hand which will with certainty prevent so many of them from occurring at all. Our worthy Labor Commissioner, Mr. McEwen, has been quoted in a recent interview as saying that 6,000 out of the 12,000

accidents reported to his department during the past year were preventable. We have a pretty rigid factory inspection law governing the safe-guarding of machinery. Is it enforced? If not, why not? Bear in mind, we don't have to amend the constitution of Minnesota in order to countersink an exposed set screw, put a guard over a rip saw, or to employ other simple and inexpensive means to save human life and limb. Are the factory inspectors practical mechanics or are they for the most part mere political favorites? It seems to me that these are questions of more practical and immediate importance than some debatable scheme for changing the method of compensation for injuries caused mainly by a lax observance of existing laws.

At any rate, the fact should be clearly understood at this time that any compensation law under which employers will be compelled to give stipulated benefits to injured workmen in every case, regardless of the circumstances of the accident, will prove an exceedingly expensive proposition to some one, either employers, workmen, or the community, unless it goes hand in hand with an equally sweeping factory inspection law capable of strict enforcement.

DISCUSSION

By Tom J. McGrath

The obsolescence of the present system of compensating injured workmen is, I think, conceeded by all who have given this subject serious thought, particularly are the fellow-servant and contributory negligence doctrines obsolete.

The former doctrine was invoked by the courts about the year 1830, at which time the industrial conditions were far different from the present conditions under which men labor. At that time the employees of one master were comparatively few, and they, in all probability, were well acquainted with each other's mannerisms, so that if a fellow servant were to show a tendency towards carelessness, the employee with whom he worked could guard against his careless action, or quit the employment and go elsewhere to work, or could, if he chose, complain to his master so that conditions might be remedied. As illustrative of the change which has taken place, the railroads have displaced the stage-coach and the canal boat, and hand labor has been supplanted to a large extent by machinery; but the fellow servant doctrine has been contemporaneous with both the modern and the antique.

In my opinion the theory of contributory negligence is entirely wrong. No man negligently exposes himself to danger, and whenever he assumes a position which brings him within the purview of the doctrine of contributory negligence, it is because of exigencies of the work require him to do so.

We are now trying to evolve a system of compensation that will do away with the doctrine of negligence and its adherent principles. The question arises, how shall this be done? We want to give the employee adequate compensation with the lightest burden on industry that it is possible to attain. It is my belief that industry should bear the whole burden of the risk and that the employee should not be made to contribute towards his own compensation. In its final analysis the burden of compensating the injured workman will fall upon the consumer, and the workingman contributes his share toward the welfare of society when he engages in the work and faces the dangers which beset him there. So far as I know there is no logical reason why the same considerate treatment should not be accorded injured employees that is now given damaged equipment.

In my opinion, the only way in which a satisfactory system can be established is by the elimination of the present waste and the accumulation of the amount of money which now goes to pay insurance premiums, attorneys fees, court costs and other incidental expenses, into a fund for distribution among the injured employees.

It seems to be the consensus of opinion among laboring men that the ideal solution of this problem is state insurance, which will, of course, necessitate a constitutional amendment. Under this system each person, corporation or co-partnership, employing a designated number of persons, might be compelled to pay a tax for each person employed, the amount of this tax to be regulated in conformity with the nature of the employment and the conditions incident thereto, which might affect the situation. This would assure the employees against the insolvency of their employers, and a state department could be maintained at an expense very much less than now required to maintain our personal injury courts.

The space allotted me prevents my going deeper into this proposition and elaborating upon the ideas expressed above; but it has been sufficient to permit me to give an intimation of my opinion upon a subject which I consider the most momentous with which the laboring men of Minnesota have ever been confronted.

A BILL FOR
AN ACT TO PROVIDE A WORKMEN'S COMPENSATION CODE

*Recommended by H. V. Mercer and W. E. McEwen of the Minnesota Commission

PREAMBLE

Whereas, Our modern industrial conditions have greatly outgrown the common law and statutory remedies previously given workmen for injuries incident to their employments; and

Whereas, Several thousand workmen are so injured in this state annually, thereby converting industry into idleness, plenty into poverty, honor into mendacity; and

Whereas, Most of the foreign countries have corrected, and many of the other states and the United States Government are seeking to correct, this deplorable condition, by compensation that will tend to prevent accidents, support the families and safeguard the general welfare of the states; and

Whereas, Simplicity, certainty and uniformity of obligation, and simplicity, rapidity and certainty of remedy are necessary; and

Whereas, It has been the satisfactory experience of more than twenty foreign countries and seems to be the unanimous view of those well informed on the subject, that a code, changing the basis of compensation for injuries to a workman from that of negligence or fault of the employer to that of a risk of the industry or that of industrial insurance; and

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*Mr. Mercer's address on "Minnesota's Part in Workmen's Compensation" is omitted and the code, which was not ready for public discussion at the time of the last annual meeting is inserted here.

Whereas, Commissions appointed by many of the states have investigated this subject, both at home and abroad, to determine what the facts demand and the constitutions allow; and

Whereas, Numerous conferences between the Commissioners of those states, many of whom were appointed to represent employers, workmen or bar associations; with representatives of the federal government and other institutions interested in the subject, including a committee of the National Conference on Uniform State Laws appointed to aid in the legislation; and

Whereas, Various theories and provisions of bills have been discussed to make them applicable to the situation and within the Constitution; and

Whereas, At the last of such conferences a committee was appointed and empowered to formulate a bill or bills under the police power of the state to adequately protect the general welfare; and

Whereas, This Commission was created to provide means of compensating workmen particularly subjected to the risks of their occupations; and

Whereas, We have followed the Uniform Conference draft as consistently as possible with our interests in this state.

Now, therefore, be it enacted by the Legislature of the State of Minnesota:

1. RIGHTS AND LIABILITIES DEFINED

Section 1. *Rights and Remedies Granted.* The right to compensation and the remedy therefor, herein granted, shall be in lieu of all rights and remedies, now existing either at common law or by statute either upon the theory of negligence or otherwise, for the injuries covered by this Code; and no other compensation, right of action, damages or liability shall hereafter be allowed to either the injured or dependents for such injuries, so

long as this Code shall remain in force, unless, and to the extent only that this Code shall be specifically amended.

Section 2. *Dangerous Employment Defined.* Every Industrial Employment in which there occurs hereafter to any of the workmen personal injuries arising out of and in the course of such employment, is for the purposes of this Code hereby declared a dangerous employment, and consequently subject to the provisions of this Code and entitled to all the benefits thereof.

Section 3. *Compensation, Conditions of the Right to.* Every employer of a workman engaged in such dangerous employment shall be subject to the provisions of this Code, and shall pay compensation, according to the conditions, percentages of wages and other amounts herein named, to every such workman so injured in his employment, or in case of death caused by such injuries, to the dependents as hereinafter defined and apportioned, for all personal injuries received by such workman arising out of and in the course of such employment and disabling such workman from regular services in such employment, and not purposely self-inflicted unless to further the duties of his employment; but on the condition precedent that in case of dispute between the parties a substantial compliance with this Code shall be made by such workman.

2. AMOUNTS OF COMPENSATION ALLOWED

Section 4. *Compensation for Waiting Period.* No compensation shall be allowed for the first two weeks after injury received, except that covered by Sections 5 and 6, nor in any case unless the employer has actual knowledge of the injury, or is notified within the period specified in Section 14, or the workman relieved as provided in Section 37.

Section 5. *Compensation for Medical Expenses.* During the first two weeks after the injury, the employer

shall in all cases furnish reasonable medical and hospital services and medicines, when needed, not to exceed one hundred dollars in value, unless the workman refuses to allow them to be furnished by the employer; provided the employer shall not be required to pay any other physician than his own for any of the medical services or expenses which he can reasonably furnish after the first aid to the injured and an opportunity of properly changing physicians is had, unless the employer knows of the necessity therefor, or is requested so to do and fails or refuses to provide the same promptly.

Section 6. *Compensation for Funeral Expenses.* In case the injury causes death within the period of five years, the reasonable funeral expenses not to exceed one hundred dollars shall be paid by the employer.

Par. a. The board of arbitration may determine the amount that is reasonable and fair for medical, hospital and funeral expenses hereunder.

Sectin 7. *Compensation upon Death.* In case the injury causes death within the period of five years, the compensation shall be in the amounts and to the persons following:

Par. a. No Dependents. If there be no dependents, then the medical, hospital and funeral expenses, as provided in Sections 5 and 6 hereof.

Par. b. Dependents. If there are wholly dependent persons at the time of the injury, then a payment of fifty per cent of the wage, to be made at reasonable intervals not longer than monthly, and to continue during dependency for the remainder of the period between the death and the end of the five years after the occurrence of the injury, but in no case to continue longer than five years after the injury or to amount to more than three thousand dollars on account of the compensation for the injury to that person.

Par. c. Partial Dependents. If the deceased at

the time of death leaves any persons who were partially dependent at the time of the injury they shall receive only that proportion of the benefits provided for those wholly dependent which the average amount of the wage contributed by the deceased to such partial dependent at, and for a reasonable time prior to, the time of the injury bore to the total wage of the deceased, during the same time.

Par. d. Who are Dependents. The compensation granted by this Code in case of death shall be paid to one of the following persons, if either wholly or partially dependent, who shall be entitled to receive such payments in the order in which they are named:

(1) Husband or wife, as the case may be; (2) Guardian of children, (3) Father, (4) Mother, (5) Sister, (6) Brother.

Payment to a person subsequent in right shall be lawful and shall discharge all claim therefor if the person having the prior right has not claimed the payment within thirty days of the time it becomes due, and the employer does not know or by reasonable inquiry cannot ascertain within a reasonable time where the payment can be made to the person prior in right.

Par. e. Application of payments. The person to whom the payment is made shall apply the same to the use of the several beneficiaries according to their respective claims upon the decedent for support. In case any payee or employer is not certain as to the person to whom payment or distribution should be made, or as to the proportions thereof, and in case any beneficiary is not satisfied with the distribution thereof, application may be made to the Board of Arbitration to designate the person to whom payment shall be made and the apportionment thereof among the beneficiaries, and payment and distribution shall thereafter be made in accordance with the decision of the Board; if the matter of proper depend-

ents be in dispute or incapable of prompt determination, and the amount of compensation due is not disputed, the Board may order the money to be paid over to it to be held for the proper dependents.

Section 8. *Compensation upon Total Disability.* In case of temporary or permanent total disability of the workman from the time the payment period begins until the end of the five year period, or during any portion thereof, the compensation shall be fifty per cent of the first two thousand dollars of the annual wage during such disability; payment to be made at the intervals when such wage was payable as nearly as reasonably can be, but in no case to continue longer than five years from the injury, and not to include the time when the rule for payment upon death would operate.

Section 9. *Compensation for Partial Disability. Par. a.* In case of temporary or permanent partial disability, the workman shall receive fifty per cent of the necessary decrease on the first two thousand dollars of his annual wage during the continuance of such decrease, but not longer than five years in time from the injury and not to include the time when the rules of payment for death or total disability would operate.

Par. b. Maiming and Disfigurement. Whether the disability be partial or total, if the body be maimed or disfigured, the compensation shall be determined as nearly as may be as follows:

1. *Loss of Two Members, etc.* If there be such loss or disfigurement as amounts to, or is the equivalent of, a loss of as much as, or more than, both ears, eyes, hands or feet, or to one each of two or more thereof, then for such maiming or disfigurement forty per cent of the first two thousand dollars of the yearly wage during so much of the five-year period as the workman remains alive.

2. *Loss of One Member, etc.* Or if there be such

loss or such disfigurement as not to come within the last sub-section, and to amount to a loss of one of any of such organs, or to the loss of one and other injuries, then fifteen per cent of the first two thousand dollars of the annual wage during so much of the five-year period as the workman remains alive.

3. *Other Disfigurement, etc.* If the body be otherwise maimed or disfigured not sufficiently to come within either of the above sub-sections, then such percentage of the first two thousand dollars of the annual wage during the continuance of the injury, not exceeding the five-year period or the life of the workman, as would bear a just proportion to the percentages under the foregoing sub-sections.

4. *Disability with Disfigurement.* In addition to such percentages for maiming and disfigurement, there shall be the compensation for total or partial disability as provided in and only according to the provisions of Sections 4, 5, 6, 7, 8 and paragraph *a* of Section 9 hereof, except that the percentages therefor under this subsection shall be figured only on the balance of the first two thousand dollars of the annual wage after allowing the percentages for maiming and disfigurement under the foregoing sub-sections; but this whole section shall apply during the life of the injured only, and upon his death, as a result of such injuries within the five-year period, then the percentages specified in Sections 7, 8 and Par. a. of 9 shall thereafter be applicable.

Section 10. *Par. a. Payment in Lump Sum.* The amounts payable periodically under the foregoing sections may be commuted on a fair basis to one or more lump sum payments by the Board of Arbitration, with the consent of the employer and workman or his dependents, at any time after six months if special circumstances be found which in the judgment of the Board require the same.

Par. b. Settlement by Annuity of Property. The Board of Arbitration may at any time by award allow any employer or any insurer of such employer with the consent of the workman or his dependent to compromise and settle any award by the transfer of property or the settlement of any annuity or other form of benefits, if special circumstances be found which in the judgment of the Board require the same.

Section 11. *Par. a. Wages Defined. Regular Workmen.* When the workman is employed at the time of the injury in a regular capacity at a fixed and reasonable wage which remains unaltered and continuous substantially throughout the year either in his own case or in the case of persons engaged in the like employment, the wage taken as the basis of compensation under the foregoing sections shall mean the wage so paid, reckoned on such yearly basis.

Par. b. Other than Regular Workmen. Where the workman is at the time of the injury employed other than as above provided, the wage so taken shall be an average or fair wage which the particular workman ought to receive on a reasonable basis, considering the rate he has been getting, his ability and willingness to work, the nature of the service he was performing, and all of the other circumstances of the case.

Section 12. *Par. a. Conditions Varying Compensation. Increasing Disability by Workman's Condition.* If the employer shall clearly establish that the injuries, death, or disability were due in whole or in part to the workman's previous injuries, sickness, disease, physical or mental ailments or deficiencies, age, or infirmity, then and to that extent only the compensation herein allowed shall be correspondingly reduced.

Par. b. Varying Minor's Wage. If the workman or a beneficiary under this Code shall clearly establish that the injured was a minor or apprentice of such age

and experience or of such physical condition when injured that under natural conditions he would be expected to increase in wages, these facts may be considered in arriving at his reasonable wage, to conform to the spirit of this Code.

Par. c. Life Expectancy. If the employer shall clearly establish that the injured was a person of such old age or physical condition at the time of the injury that under natural conditions he would not be expected to continue to earn full wages during the whole five-year period, these facts may be considered in arriving at his reasonable wage and his probable length of earning capacity at the time of the injury.

Par. d. Vested Rights. The compensation or other rights or remedies provided or awarded or the defenses thereto shall never be vested except subject to such changes as the provisions of this Code allow.

3. MODE OF CLAIMING COMPENSATION

Section 13. *Employer's Knowledge.* If it be found as a fact by the Board in its award that the employer had notice or knowledge of the occurrence of the injury, and also that such injury was severe enough to immediately and completely disable the workman from continuing his work then and in such case the notice under Section 14 shall not be essential.

Section 14. *Par. a. Time of Notice. If not given in 14 days.* Unless the employer shall have the notice or knowledge provided in Section 13, or unless the workman or some one on his behalf, or some of the dependents or some one on their behalf or some other person, shall give notice thereof the the employer within fourteen days or be relieved therefrom according to this Code, then no compensation shall accrue until such notice is given.

Par. b. Notice within 30 days. If the notice is

given within thirty days, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect, or inaccuracy, and then only to the extent such prejudice is shown.

Par. c. Notice within 90 days. If the notice is given within ninety days, and if the workman or other beneficiary shall show that his failure to give prior notice was due to his mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation, or deceit of another person connected with, or acting for the employer or to any other reasonable cause or excuse, then compensation may be allowed, but reduced to the extent only that the employer shall show that he was prejudiced by failure to receive such notice.

Par. d. Special Relief after 90 days. Unless and until such notice be given within ninety days of the injury if the service can be made within the State or relief granted under Section 37 or excepted under Section 23 hereof, no compensation shall be allowed.

Section 15. *Service of Notice.* The notice may be served personally upon the employer, or upon any agent of the employer, or authority upon whom a summons may be served in a civil action, or by sending it by registered mail to the employer at the last known residence or business place thereof, and may be, and when the requirement is reasonable shall be, in substantially the following form:

"Notice to Employer of Personal Injury Received: You are hereby notified that an injury was received by (Name)——who was in your employ at (place)——at the job of (kind of work)——on or about the——day of ————19—, and who is now located at (give town, street and number)——that so far as now known the

nature of the injury was———and that compensation may be claimed therefor.

(Signed).....”

(Giving Address.)

But if the employer receives a notice sent within time and improper in form, he must immediately return the same to the last known address he has for such workman and point out in writing the deficiency of such notice, or be bound as having sufficient knowledge; and if such notice is so returned an immediate new notice may be given by the workman.

Section 16. *Par. a. Joint Medical Examination.* After an injury and during the period of disability, the workman, if so requested by his employer or ordered by the Board must submit himself for examination at reasonable times to a physician selected by the employer authorized to practice under the laws of the State.

Par. b. Workman's own Physician. If the workman requests, he shall be entitled to have a physician of his own selection at reasonable times to participate in such examinations.

Par. d. Privilege. Except as provided in this Code, there shall be no other disqualification or privilege preventing the testimony of a physician who actually makes an examination.

Par. e. Employer's Physician not to give Evidence When. Unless there has been a reasonable opportunity thereafter, for such physician selected by the workman to participate in an examination in the presence of the physician selected by the employer, the physician selected by the employer shall not be permitted afterwards to give evidence of the condition of the workman in a dispute as to the injury.

Section 17. *Medical Examination by Neutral Physician. Autopsy.* The Board of Arbitration shall have

the power to employ a neutral physician of good standing and ability who shall, at the expense of the county, make such examination or examinations as the Board may request either of its own motion or on the petition of either or both the employer and workman or dependents, and in case of death the Board may require an autopsy to be held.

Section 18. *When Physicians may not Testify. Board Physician.* If the employer or the workman has a physician make such an examination and no reasonable opportunity is given to the other party to have his physician make examination, then in case of a dispute as to the injury, the physician of the party making such examination shall not give evidence before the Board, unless a neutral physician of the Board of Arbitration either has examined or then does examine the injured workman and gives testimony regarding the injuries.

Section 19. *Refusal of Medical Examination.* If the workman shall refuse examination at such reasonable time or times as the Board shall order, by physicians selected by the employer, in the presence of a physician of his own selection, or an examination by the physician of the Board of Arbitration, he shall have no right to compensation during the period from such refusal until he or some one on his behalf notifies the employer or Board of Arbitration that he is willing to have such examination.

Par. a. Certificate of Physician as Evidence. If the neutral physician make an examination, he shall file with the Board a certificate under oath as to the condition of the workman and such certificate shall be competent evidence of that condition.

Par. b. Physicians and Hospital must Notify. The physician and hospital shall immediately give written notice of the injury to the employer if they know or can reasonably obtain his name and address; if either fails

to comply herewith such one shall not be entitled to collect compensation or expenses for treating the injured.

4 LEGAL EFFECT OF SETTLEMENT AND CLAIMS

Section 20. *Par. a. Settlements.* All settlements and releases made in which the workman is given the full benefit of this Code shall be binding upon all parties, except that no settlement where the workman is entitled to receive payments longer than a period of ninety days from the injury, and no lump sum settlement, shall be binding upon the workman, unless and until the same be approved by the Board.

Par. b. Awards on Stipulations. If the employer and the workman, or the legal representatives of either, or both, are able to reach an agreement in regard to compensation or any other matter under this Code, a memorandum of such agreement may be filed with the Board; and if approved by it as conforming to this Code, an award shall be entered thereon in conformity therewith and be of the same force and effect as awards entered upon a hearing; but the Board shall have the power to investigate the matter before approved sufficiently to determine whether it is a fair settlement.

Par. c. Board may Require Copy of Releases. The Board may at any time require from the employer or insurer thereof a copy or report of any settlement or release or class of settlements or releases made with the injured workman.

Section 21. *Preference or Lien.* The right of compensation granted by this Code shall have the same preference for the whole thereof against the assets of the employer as is allowed by law for a priority claim for unpaid wages for labor.

Section 22. *Exempt and not Assignable.* Claims or payments due under this Code shall not be assignable, and shall be exempt from all claims of creditors

and from levy, execution, or attachment; but this shall not relieve the injured from his legal duties of support as between himself and family.

5. BOARD OF ARBITRATION; JURISDICTION AND AWARDS

Section 23. *Par. a. Submission to Arbitration as a Condition Precedent to Claim for Compensation.* As a condition precedent to recovery upon a claim for compensation, in case of dispute over, or failure to agree upon a claim for compensation, the workman or the dependents or others entitled to the benefits hereof as the case may be shall submit the claim for compensation hereunder both as to the fact and nature of the injuries and the amount of compensation therefor, to a Board of Arbitration as hereinafter specified in substantial compliance with this Code and shall be and remain bound by the award and such modifications thereof as shall be made under the provisions of this Code.

Par. b. Effect of General Appearance. If the employer or any other interested person appear in any proceeding herein to contest the merits thereof or to get or accept or carry out the benefits of the provisions of this Code, such person shall be deemed to have appeared generally and joined in a submission of such matter to the decision of the Board and the conditions of this Code.

Par. c. Acquiring jurisdiction. The board shall acquire and have jurisdiction of the emloyer and all other persons interested in said proceeding by the service of the notice upon them according to Sections 30, 31 and 32 of this Code, or by their general appearance, or by reference from the district court.

Par. d. Jurisdiction Retained and Suspended. When the board obtains jurisdiction of any party or matter, then it shall retain the same so long as may be necessary to carry out the purposes of this Code whether

the parties do or do not remain within the state; provided that while any portion of said matter be before the District Court or Supreme Court for determination or other purposes, the jurisdiction of this board for that matter shall be suspended.

Par. e. Suits must be on Award. No workman or dependent or other person interested in such compensation shall be entitled to commence or maintain any action at law or suit in equity for such compensation until the amount thereof shall have been determined as herein provided, and then only for the amount so awarded and according to the terms and conditions of the award and the benefits of this Code; provided this whole section shall not prevent the obtaining of jurisdiction in so far as it can be done pursuant to the fundamental laws, under the next subsection hereof.

Par. f. District Court may acquire Jurisdiction by attachment or other of its Powers over non-residents. In any case where service cannot be made within this state to acquire jurisdiction before this board as herein otherwise provided, the usual procedure shall be had before the board to the extent of serving the notice outside of the jurisdiction of the state in the same method as it would be served within the jurisdiction of the state, and the person upon whom it shall be served shall have the regular time to appear in said proceeding before said board.

If he does not appear generally therein, then the person making the application shall have the right to institute a suit in equity in the district court of the county, setting forth the facts; and if jurisdiction can be acquired in said court by attachment or otherwise, as provided by the practice and procedure in this state in said court, then upon the joining of issue, said court shall refer the questions of fact for determination to a

board of arbitration to hear, try and determine and make its award conformable to this Code and report such award back to the said district court, which shall, if it approves the same on the notice specified for entering judgment upon other awards as against the objection herein provided for such other awards, then enter a judgment thereon, and the judgment when entered shall have the same force and effect and be subject to all the other provisions of this Code as if the award had been made by appearance before the regular board and judgment had been entered thereon; if its disapproval of the same requires a further finding upon any question of fact, it shall refer that question or the whole matter back to a board as it would in any case coming through the regular channels; provided that this Code shall not be construed as covering cases where jurisdiction cannot be properly acquired within this state, upon diligent efforts.

Section 24. *Par. a. Appointment of Board of Arbitration. Creation and Appointment of Board.* There is hereby created a board of Arbitration for each county in this state, consisting of three competent members, who shall be appointed by the district court for such counties and hold their offices subject to the will and discretion of the district court by which they are appointed.

Par. b. Additional Boards. The court may from time to time appoint additional boards to act for such length of time as it deems necessary for the expeditious dispatch of the business of the district.

Par. c. Boards may be Authorized to Act in Other Counties. In judicial districts containing more than one county, and not having sufficient business to occupy one board's complete time in the county of original appointment, the court shall appoint a board to act in one county and then enter an order in such other county or

counties as the said board can fairly cover authorizing and directing such board to act in such other county or counties hearing the matters arising therein as the board for that county. The members need not necessarily reside in the same county.

Par. d. Vacancies—How Filled. The court may fill all vacancies whether temporary or permanent occurring at any time in the board.

Par. e. Majority to Act. During a single vacancy the remaining two members shall exercise all the power and authority of the Board until such vacancy is filled.

Section 25. *Par. a. Organization of Board. Interest or Bias of Arbitrator.* No person shall sit as an arbitrator in either a case where he is related to either party by marriage or blood within the third degree, or who has any personal interest in the matter in dispute; provided that objection to any arbitrator, if the facts be then known, must be made in writing and filed with the board before hearing; and if the matter be not otherwise disposed of, it shall be heard and determined by the district court on motion, and its determination thereof shall be final.

Par. b. Chairman. The board shall organize by choosing one of its members as chairman.

Par. c. Quorum. A majority of the board shall be a quorum for the hearing and decision of any matter, and the decision of any two thereof shall be the decision of the board. In case the board shall be equally divided as to any matter, the same shall be tried *de novo,* before a full board of three members.

Par. d. Qualification of Arbitrators. No person shall be appointed to, or be eligible for, the position of arbitrator, clerk, assistant, expert or any other office or position hereunder, who is either a relative of any member of the court appointing him or of any of the arbitrators acting within the county, or who has been active

in the election or appointment of any member of the court appointing him or active in the appointment of any member of the board or superior employer hereunder, or who has solicited his own appointment either directly or indirectly.

Par. e. Contempt. The district court shall have the same power to punish for contempt of the board that it has for a similar contempt of its own powers.

Section 26. *Par. a. Clerks and Assistants. Appointments.* The district court may appoint a clerk of the board or require the clerk of said court to act and the Board may employ experts and such other clerical help as it may deem necessary, but all subject to the power of said court to disapprove same.

Par. b. Bonds Required. All persons required to handle moneys and other funds under this Code shall give such bonds as the district court shall order as being approximately twice the amount of money likely to be in their hands at any time, and the expense of such bonds shall be paid from the county funds; the court may from time to time increase or lower those bonds to comply with the intention of this Code.

Par. c. Depository. The court may also provide for depositories of such funds and sufficient bonds therefor.

Section 27. *Par. a. Salaries and Expenses. Salaries, Expenses, Witness Fees.* All salaries, fees and expenses authorized by this Code, except those of the members of the board, including the fees of witnesses within thirty miles, shall be audited and paid out of the general funds, the same as district court expenses; provided that the board shall have power to limit the expense of witnesses to a reasonable amount.

Par. b. Compensation of Board. The compensation of the board shall be fixed by the district court, but shall in no case exceed per member five dollars per half day or ten dollars per day for actual and necessary

time and the actual cash outlay for necessary expenses of extra travel, and shall be paid in the same manner and from the same funds as other county employees.

Par. c. Compensation of Clerks. The compensation of clerks and other assistants shall be fixed by the board, subject to the approval of the district court.

Section 28. *Par. a. Jurisdiction. The Board.* The Board of Arbitration shall have jurisdiction throughout their respective counties to arbitrate all controversies arising within the county and permitted by or growing out of this Code, and to make awards consistent herewith.

Par. b. Disputes Arising Outside of County. The board shall also have jurisdiction to arbitrate any such controversies arising within the state outside of their counties, if all parties interested therein shall consent thereto in writing.

Par. c. Transfer to Another County. Any matter for arbitration commenced in one county may be transferred to another county to be heard by the arbitrators of the county in which the injury occurred or by the board in the county to which it is transferred, if all parties consent thereto in writing.

Section 29. *Par. a. General Powers. Rules of Practice.* The district courts shall make rules of practice and procedure to apply to, but not inconsistent with, this Code, and so far as possible uniform throughout the State.

Par. b. Attorneys' Fees may be Fixed. The board may fix the amount of compensation which any attorney of a workman or dependent shall be entitled to receive for services out of the sum awarded as compensation.

Par. c. General Powers. There is hereby granted to the Board of Arbitration and to all the persons vested with rights, powers, or obligations, such further powers and means of their exercise as may be necessary and

proper to carry out the purposes of this Code, not inconsistent with the fundamental laws.

6. PROCEDURE AND AWARDS UNDER ARBITRATION

Section 30. *Par. a. Request to Board. Request for Hearing.* Any person in interest desiring a determination by said board of any necessary matter may bring it before the board by a written and signed request, filed with the clerk of the board.

Par. b. Board's Power to Move. The board of its own motion by notice made and served as provided in Sections 31 and 32 hereof may bring any of the parties before it for the purpose of determining whether any matter growing out of any such personal injuries is proceeding according to the spirit of this Code.

Par. c. Form of Request. The request shall be in such form as may be prescribed by the board, with the approval of the district court, and shall furnish so far as possible the data for service of notice.

Section 31. *Notice and Service.* Upon the filing of such petition, on request, the clerk shall issue under the name of the board a notice to all of the interested parties so far as known to him, and cause the same to be served in the method prescribed in this Code for the service of notice of injuries to the employer; except that service under this provision must be made within the state or in accordance with the method prescribed in subdivision *f* of Section 23 hereof; provided that while the board has jurisdiction of any proceeding the notices may be filed and served by registered mail sent to the last address known to the Board and a reasonable time to respond allowed.

Section 32. *Contents of Notice.* The notice shall cover the following things:

Par a. The request made, giving the name or names of the person or persons making the same.

Par. b. The general nature of the matter to be investigated sufficiently describing the same to enable the parties to prepare for hearing.

Par. c. A summons to appear at a time and place for the hearing and a notice that otherwise he will be awarded in default.

Par. d. A notice that such other and further relief may be claimed and awarded as will do justice in the premises.

Par. e. Service may be proven by admission in writing or by certificate of the clerk of the Board or in any other manner that proof of service of a summons may be made.

Section 33. *Time of Hearing.* The time for a hearing upon the merits of a claim for compensation shall not be less than ten days, and upon other matters not less than five days, after notice given, unless as to such other matters the board shall shorten the time by order to show cause.

Section 34. *Pleadings.* No formal or written pleadings shall be required in the hearing of any controversy arising under this Code.

Section 35. *Rules of Procedure. Evidence.* The board shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as herein provided, but may make the investigation in such manner as in their judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this Code, provided that all parties must have reasonable notice of hearing and fair opportunity to be heard on all investigations, inspections and hearings.

Section 36. *Power of Inspection, Subpoena and oath.* The board shall have the power—

Par. a. To inspect or cause to be inspected the premises where the injury occurred.

Par. b. To require any books or papers, tools or other movable chattels to be produced or inspected.

Par. c. To require any workman claiming compensation to be physically examined by a physician appointed by the board or to require an autopsy to be held on the body of any workman for whose injuries compensation may be claimed.

Par. d. To issue subpoenas to compel the attendance of witnesses or parties, and the production of books, papers, records or chattels.

Par. e. To administer oaths.

Par. f. To require process to run in the name of the chairman.

Par. g. The board shall have power to hear and decide and render awards, either on default or hearing; but defaults shall be liberally reopened upon reasonable showing.

Section 37. *Par. a. Continuance, Re-hearings Interim Awards, etc. Retaining and Re-acquiring Jurisdiction, etc.* The board may either retain or re-acquire jurisdiction and continue from time to time the proceedings upon any claim or matter and may hold such interim hearings and make such interim awards and such modifications of prior awards, or grant and hold such rehearings as may be necessary until the claim can be justly and finally awarded for the full balance of the period; but unless otherwise provided by order of the board or by this Code it shall retain jurisdiction until all payments provided and other matters arising on claims end.

Par. b. Emergency Relief. In case of failure to serve notice or to reach all the parties, or in case it appear that a default should be removed, or any other matter done including the modification or amendment of an award otherwise final, in the interest of fairness, the board may take such action thereon as will promote justice and tend to carry out the spirit of this Code.

Section 38. *Records.* The clerk shall keep a record of the proceedings of the board, showing separately each case by the board considered, including the nature of the injury, the names of the parties and their agents or attorneys if any appearing therein, the names of the witnesses who testified before the board, with such exhibits as can reasonably be kept, or copies or photographs thereof, furnished by the parties, and the award, and such other records as may from time to time be directed by the Board.

Section 39. *Form of Award.* The Board shall make its awards in writing in such terms as it shall decide to be consistent with the facts and the spirit and powers of this Code and as nearly as may be in the following form:

1. Title of the Claim.

2. We find in the above case that (workman's name)———— on (date)———— received injuries arising in and growing out of the course of the employment of (employer's name) ———— at (place)———— while working at the job of (kind of work) ———— and the fair wage was the sum of $..... per..... payable .....

3. That the injuries appear now to be and are as follows:

....
....

4. That those injuries have caused (death or degree of disability as case may be).

5. That for (total or partial)———— disability, it is hereby found and awarded that the said employer shall pay compensation in the amount of $..... per (week or month), payable to———— for the use and benefit of the following persons (names) ————in the respective proportions for the

times set opposite their names or until modified or changed by this board upon hearing.

6. (Amount of compensation, if any, allowed to attorney).

7. (Any further or different material and necessary matters that conform to the facts and this Code).

8. The times and places of payments.

Section 40. *Award to be conclusive.* The findings and awards made hereunder shall be final and conclusive as to the nature of the injuries and the amount of compensation, unless and until reopened, modified or set aside by either the board or the court.

Section 41. *Application for judgment on Award.* Either party to any controversy before the board, when an interim or final award is rendered and the payment thereof has been refused, may present a certified copy thereof to the district court of the county and upon five days' notice in writing to the other party apply for judgment thereon.

Section 42. Judgment on Award. Dicharging Liens. The district court shall thereupon render a judgment in accordance therewith, unless such award is vacated as herein provided. Such judgment shall have the same effect as though duly rendered in an action tried and determined by said court, and shall with like effect be entered and docketed, except that no execution shall be issued thereon for more than is then due and the judgment shall not be a lien on realty except for due payment. The employer may file an affidavit with the clerk of the district court stating the payment of all amounts due under the judgment, and attaching the original receipt or paid check, order or draft for the latest due payment; if it appears from said receipt and the said affidavit that all such payments have been made, they shall be deemed discharged, unless and until such

record be set aside by the court which may be done upon application and cause shown.

Section 43. *Par. a. Vacating the Award.* Any party aggrieved by any award may, within twenty days after the filing thereof and before judgment thereon, apply to the district court of the county, upon five days' notice to the other party, for an order vacating such award and granting a new hearing; but such order may be made only on a showing of fraud or gross error of the arbitrators, want of jurisdiction or errors at law; and then if the application is granted and any other or further finding of fact necessary the claim shall be re-committed for arbitration to an unbiased board.

Par. b. Application to District Court after Judgment. Any person authorized to obtain relief after judgment herein may apply therefor to the district court and obtain the same, and if any finding of fact be necessary on dispute the court may open the judgment and re-commit the matter to the jurisdiction of the board to find the facts.

7. INSURANCE

Section 44. *Employer May Insure.* An employer who is responsible for compensation as provided in this Code may insure the risk in any manner then authorized by law. But those writing such insurance shall in every case be subject to the conditions contained in Sections 45 and 46.

Section 45. *Insurance by Corporation for Profit or by Mutual Association or Others.* If the risk of the employer is carried by any insurer doing business for profit, or by any insurance association or corporation formed of employers or workmen, or by employers and workmen, to insure the risks under this Code, operating by the mutual assessment or other plan or otherwise, then

Par. a. Unqualified Risk. In so far as policies

are issued on such risks they shall provide for compensation for the injuries according to the full benefits of this Code.

Par. b. Binding Provision as Between Workman and Insurer. Such policies shall contain a clause to the effect that as between the workman and the insurer the notice and knowledge of the occurrence of the injury on the part of the employer shall be deemed notice and knowledge on the part of the insurer; that jurisdiction of the employer for arbitration or other purposes shall be jurisdiction of the insurer, and that the insurer will in all things be bound by and subject to the awards rendered against such employer upon the risks so insured.

Par. c. Equitable Lien on Insurance. Such policies must provide that the workman shall have an equitable lien upon any amount which shall become owing on account of such policy from the employer to the insured, and in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the workman or dependents, the said insurer will pay the same direct to said workman or dependents, thereby discharging all obligations under the policy to the employer and all of the obligations of the employer and insurer to the workman, but such policies shall contain no provision relieving the insurance company from payment when the employer becomes insolvent or discharged in bankruptcy or otherwise, during the period the policy is in operation, if the compensation remains owing.

Par. d. The insurer must be one then authorized by law to conduct such business and must have and maintain sufficient reserves to meet the requirements of the insurance laws applicable thereto then in force in this state.

Section 46. *Contracts Between Employer and Employe.* It shall be lawful for the employer and the workman to agree to carry the risks covered by this

Code in conjunction with other and greater risks and procure other and greater benefits, not exceeding the amount of the wage, such as additional compensation, accident, sickness or old age insurance or benefits, and the fact that such plan involves the contribution by the workman shall not prevent its validity if the employer pays for the whole of the risks otherwise covered by this Code and the workman gets the whole of the additional benefits; but no contracting out of this Code shall be valid.

8. THIRD PERSONS' RIGHTS AND LIABILITIES

Section 47. *Par. a. Workmen of Independent Contractors and Sub-Contractors.* Every person who undertakes to execute work either on his own account or as contractor requiring such dangerous employment of workmen in, on, or about premises where he as principal contracts with any independent contractor, subcontractor or other person to do a part or the whole thereof and whom he knew or had reason to believe was either insolvent or irresponsible, and does not require such person either to insure or secure the risks covered by this Code, and any such person who creates or carries into operation any fraudulent scheme, artifice or device to enable him to execute such work without himself being responsible to the workman for the provisions of this Code shall himself be included in the term "employer," and with the immediate employer jointly and severally liable to pay the compensation and be subject to all the provisions of this Code to the extent of one full compensation.

Par. b. References to Employer. References and provisions of this Code include such employer where compensation is claimed from, or proceedings taken against the principal hereunder, but the amount of compensation shall be calculated with reference to the wage

of the workman under the contractor by whom he is immediately employed.

Par. c. When Not Liable for Acts of Third Persons. The employer shall not be required to pay for injuries due entirely to the acts of third persons not engaged in, or connected or associated with the business or occupation of the employment of the employer in the job in and out of which the injuries arise.

9. WORDS AND PHRASES DEFINED

Section 48. *Par. a. Words and Phrases. Board.* Wherever the term "board," "arbitrators" (when not referring to the individuals) or "board of arbitrators" are used they shall each be deemed to mean "board of arbitration."

Par. b. "Child or Children" shall include posthumous children and all other children entitled by law to inherit as children of the deceased injured.

Par. c. Employer. The term "employer" as used herein shall include every person employing such a workman as comes within this Code; and shall mean any person or corporation, co-partnership, or association or group thereof, and their successors or legal representatives, and shall include state, county, village, town, city, school district and other public employers.

Par. d. Who are Deemed Dependents. The husband or wife while remaining single, and the minor children until they reach their majority shall be deemed dependent; all others shall be presumed not dependent until actual dependency be shown, and then deemed dependent only to the extent shown.

Par. e. Physician Includes. The term "physician" shall include "surgeon."

Par. f. Workmen Include. The term "workmen" shall include the singular and plural and all ages and both sexes.

Par. g. Workmen Defined. The term "workmen" shall mean all employed persons engaged in industrial employments who are ordinarily known as laborers and workmen and all other employes commonly known as servants under the law of Master and Servant now in force in tort actions, when subjected in their work to the dangers of such employment; but shall not include independent contractors or sub-contractors or their employes, except such employes as are covered by reason of the conditions provided in Section 47 of this Code.

Section 49. *Personal Injuries, etc.* Without otherwise affecting either the meaning or interpretation of the abridged clause, "personal injuries arising out of and in the course of employment" it is hereby declared:

Par. a. Not to cover workmen except while engaged in, on, or about the premises where their services are being performed, or where their service requires their presence as a part of such service at the time of the injury and during the hours of service as such workmen, and subjects them to dangers peculiar to that employment.

Par. b. Agents of Others. It shall not include employes of other persons whose agents they are for transacting such employment, except when the person who engages the principal of such agent subjects the agent to peculiar dangers in the performance of such duties.

Par. c. It shall cover, all injuries to the workman that are due to, or incidental to, either the dangers or risks of his employment.

Par. d. Drunkenness. It shall not cover injuries occasioned by drunkenness of the workman himself, unless the employer or superior servant or agent thereof allows him to continue the work knowing that he is drunk, but shall cover such cases, and cases where the injuries are occasioned, in whole or in part, by increase of the hazards resulting from the drunkenness of a fellow-serv-

A BILL FOR AN ACT

To Provide a Code for the Relief of Workmen Injured in Employment, by an Elective System of Industrial Insurance

Recommended by George M. Gillette of the Minnesota Commission, in a Minority Report

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

DIVISION 1

Section 1. *Actions at Law. Election of Remedies. Assumption of Risk and Fellow Servant Rules not a Defense.* In any action to recover damages for a personal injury sustained within this state by an employe while in the course of his employment, or for death resulting proximately from personal injury so sustained in which recovery is sought upon the ground of want of ordinary care of the employer, or of any officer, agent or servant of the employer, it shall not be a defense:

(a) That the employee, either expressly or impliedly assumed the risk inherent in the employment or those arising from the failure of the employer to provide safe premises and suitable appliances.

(b) That the injury or death was caused in whole or in part by want of ordinary care of a fellow servant.

Section 2. *Rights to Damages Confirmed and Amended. Compensation for Death.* An employe shall

*Only Division I and sections 1, 2 and 3 of Division II of this bill are given in full. The remainder of the bill is sufficiently indicated by the comments following.

have and maintain the same right to damages for personal injuries and his legal representatives or next of kin shall have and maintain the same right to damages for death by wrongful act as now exists, provided that in any claim for damages arising out of the death of an employe resulting from negligence, the amount recovered shall not exceed $3,000; and provided further that no contract of an attorney at law for any contingent interest in any recovery under this right shall be a lien on the employe's claim, causes of action or judgment, except only in such amount and on such terms as the trial court shall order or allow.

Section 3. *Employer and Employe can only Elect and Contract as Provided in Code.* No contract, rule or regulation, except the election hereinafter provided for, shall exempt the employer from any of the provisions of the preceding sections of this Act.

Section. 4. *Liability for Bodily Injury When and How Created.* Liability for the compensation hereafter provided for in lieu of any other liability whatsoever shall, without regard to negligence, exist against an employer and in favor of his employee or workman for any bodily injury due to accident sustained by such employee or workman, and for his death, if the injury proximately causes death where the following conditions of compensation concur:

(a) Where, at the time of the accident, both the employer and employee are subject to the provisions of this Act according to the succeeding sections hereof.

(b) Where, at the time of the accident, the employee or workman is performing service in, on, or about the premises of his employer and within the hours of service, and the injuries or death are sustained in the course of and arising out of the employment.

(c) Where the injury or death is proximately caused by accident, either with or without negligence

and is not purposely self inflicted to obtain compensation, or due to the workman's intoxication or wilful misconduct.

Where such conditions of compensation exist for any bodily injury or death, the right to the recovery of such compensation, pursuant to the provisions of Division II. of this Code shall be the exclusive remedy against the employer for such injury or death. In all other cases, the liability of the employer shall be the same as if this and the succeeding sections of this Act had not been passed, but such employer shall then be subject to the provisions of the preceding sections of this Act.

Section 5. *Who are Employers.* The following shall constitute employers subject to the provisions of Division II, of this Act within the meaning of the preceding section.

(a) The state and each county, city, town, village and school district therein and every other public employer within this state.

(b) Every person, firm and private corporation or association, or group thereof (including any public service corporation) who has any person in service under any contract of hire, express or implied, oral or written, and at or prior to the time of an accident to the employee or workman, for which compensation may be claimed under this Act, or in the manner provided in the next section shall have elected to become subject to the provisions of Division II. of this Act and who shall not at the time of such accident have withdrawn such election in the manner provided in the next section.

Section 6. *Election of Employers, How Made to Come Under Code.* Such election on the part of the employer shall be made by filing with the Board of Arbitration, hereinafter provided for, in the county in which his or its business is principally carried on, a

written statement to the effect that he or it accepts the provisions of Division II. of this Act, the filing of which statement shall operate within the meaning of Section 4 to subject such employer to the provisions of Division II. of this Act and all Acts amendatory thereof for the term of one year from the date of the filing of such statement and thereafter without further act on his part for successive terms of one year each, unless such employer shall at least thirty days prior to the expiration of such first or any succeeding year file in the office of said Board a notice in writing to the effect that he withdraws his election to be subject to the provisions of Division II. of this Act.

Section 7. *Who are Employees or Workmen.* The term "employee" or "workman," as used in Section 4, of this Act shall be considered to mean—

(a) Every person in the service of the state or of any county, city, town, village or school district therein under any appointment or contract of hire, express or implied, oral or written; but not to include any official of the state or of any county, city, town, village or school district therein, who shall have been elected or appointed for a regular term of one or more years or to complete the unexpired portion of any such regular term.

(b) Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens and also including minors who are legally permitted to work under the laws of the state, who, for the purposes of Section 4 shall be construed the same and have the same power of contracting and election of remedy as adult employees.

Section 8. *Election of Employees, How Made to Come Under Code.* Any employee or workman, as defined in Par. (a) of the preceding section shall be subject to the provisions of Division II. of this Act and of any Act amendatory thereof. Any employee, as defined

in Par. (b) of the preceding section shall be deemed to have accepted and shall within the meaning of Section 4 of this Act be subject to the provisions of Division II. of this Act and of any Act amendatory thereof, if, at the time of the accident upon which liability is claimed.

(a) The employer charged with such liability is subject to the provisions of Division II. of this Act.

(b) At the time of entering into his contract of hire, express or implied with such employer, the employee or workman shall not have given to his employer notice in writing that he elects not to be subject to the provisions of Division II. of this Act, or in the event that such contract of hire was made in advance of such employer becoming subject to the provisions of this Act, such employee shall, without giving such notice remain in the service of such employer for thirty days after the employer has filed with the Board of Arbitration an election to be subject to the terms of Division II. of this Act.

Section 9. *Employees Must Elect, Cannot Hold Both Right for Damages and Right to Compensation.* An employee shall not be entitled to hold and exercise both of the foregoing rights; that is to say, the right to an action at law for damages under Section 2 and also the right to compensation under Section 4, but must elect which right he will exercise, prior to injury.

Section 10. *Interim Right not Affected.* Until this law shall be in effect, no right of any employee to recover against the employer or any other person for injuries, shall be in any way affected.

DIVISION II

Elective Compensation.

1. *Rights and Liabilities Defined.*

Section 1. *Rights and Remedies Granted.* The right to compensation and the remedy therefor, herein-

after granted, shall be in lieu of all rights and remedies, now existing either at common law or by statute, either upon the theory of negligence or otherwise, for the injuries covered by this Code; and no other form or amount of compensation, or determination thereof, or right of action, damages or liability shall hereafter be allowed to either the injured or dependents for such injuries, so long as Division II. of this Code shall remain in force, unless, and to the extent only that it shall be specifically amended.

Section 2. *Employer and Workman May Elect.* Every employer as hereinafter defined, who shall have elected in the manner prescribed by Division I. of this Code to accept the provisions of Division II. of this Code in lieu of any and all other common law and statutory liability now existing, and every workman, as hereinafter defined, who shall have so elected in like manner, shall thereafter be subject only to the provisions of Division II. of this Code and shall be entitled to all the benefits thereof. No employer or workman shall be subject to the provisions of this Division of the Code unless and until he shall have so elected.

Section 3. *Compensation, Conditions of the Right to.* Par. (a) Every such employer shall pay compensation, according to the conditions, percentages of wages and other amounts herein named, to every such workman, or, in case of death caused by such injuries, to the dependents as hereinafter defined and apportioned, for all bodily injuries due to accident irrespective of fault, and received by such workman while in such employ, and arising out of and in the course of such employment, and disabling such workman from regular services in such employment, and not purposely self-inflicted to obtain compensation, or due to his intoxication, or wilful misconduct; but on the condition percedent that in case of dispute between the parties a substantial compliance with

this Division of this Code shall be made. No provision of this Code shall be construed as creating against the employer a liability to compensate the workman for injury or death due to an act of God or to war or riot, nor for any disease.

Limit of Employer's Liability. Par. (b) In no case shall the liability of the employer under this Code exceed $50,000 for compensation for bodily injuries or death caused by any one accident involving injuries or death to more than one person.

If in any such case, the aggregate compensation due the injured shall exceed $50,000, each injured person, or his dependents shall be entitled to receive only that proportion of his full compensation which $50,000 bears to the aggregate amount of compensation due for that accident.

* * * * *

Section 49. It is hereby declared to be the intention, and the two divisions of this Code were adopted together, to provide an election of remedies, and that neither division of the Code would have been passed or adopted without the passage and adoption of the other division. It is further declared to be the intention, that the employer shall not be deprived of the defenses named in paragraphs (a) and (b), Division I. of this Code, in cases where the workman or employee does not elect to accept the provisions of Division II. of the Code; and in cases where the employer does not elect to accept the provisions of said Division II., the amount of recovery for death by wrongful act shall not be limited to $3,000.00, but shall remain at $5,000.00, as provided in Section 4503, Revised Laws 1905.

COMMENT ON THE PRINCIPAL DIFFERENCES BETWEEN THE GILLETE CODE AND THE McEWEN-MERCER CODE

By George M. Gillette

DIVISION 1

The Gillette Code provides a system of compensation or industrial insurance elective in form but compulsory in fact. The defenses of assumption of risk and the fellow-servant rule are taken away from the employer, if he does not elect to come under the act, and the dependents of a workman in case of death can recover the full amount of $5,000.00. If the workman does not elect to come under the act, the defenses of assumption of risk and fellow-servant rule are automatically restored to the employer, and the dependents of a workman who is killed can only recover $3,000.00. Thus both the employer and the workman are induced to accept the provisions of the Code. The right of election, however, is left to both. The employer can defend himself against actions for personal injury, but can only summon to his defense the plea of contributory negligence. By this method there is no liability imposed on the employer without fault, nor is the right of jury trial taken away from the employee.

There is no necessary classification of employments as dangerous or otherwise, and therefore the danger of making unreasonable classifications is avoided. This is the form of Code which has been adopted by the Wisconsin Commission and also the New Jersey Commission, and to my mind seems in less danger of encountering constitutional difficulties than does the plan suggested by Messrs. McEwen and Mercer, or does the plan adopt-

ed by the New York Commission. In many respects, also, it is less objectionable. Under the McEwen-Mercer Code, farmers, storekeepers and in fact every form of industrial employment carried on for profit would be necessarily included. Under the Gillette Code, they would not be included unless they elected to come under its provisions, and forms of employment which perchance have never heretofore had an accident within the state would not on the occurrence of the first petty injury after the enactment of the Code, forever thereafter be classed as dangerous employments.

Many of the objections to the New York law would be obviated in that presumably most of the occupations and most of the workmen employed in industries in which accidents frequently occur would come under its provision. The New York law is generally understood to be ineffective by reason of the fact that few of the workmen elect to come under it. At the same time it is burdensome to the employer by reason of the fact that he is under a possible double liability.

The elective provisions of the Gillette Code are substantially the same as those prepared by a committee consisting of Dean Wigmore, Dean of the Law Department of Northwestern University, Judge Sanborn of the Wisconsin Commission, and Mr. Mercer of our own Commission. I believe this elective form represents the sentiment of the vast majority of lawyers who have given study to the subject

DIVISION II

In Section 3, Paragraph A, of the Gillette Code, it is provided that every such employer shall pay compensation according to the percentage of wages and amounts herein named to every such workman or in case of death caused by such injuries to the dependents as hereinafter defined and apportioned. *For all bodily injuries due to*

accident received by such workman while in such employ and arising out of and in the course of such employment and disabling such workman from regular service in such employment and not purposely self-inflicted to obtain compensation, or due to his intoxication or willful misconduct. The McEwen-Mercer Code provides that such compensation shall be paid for all *permanent injuries received by such workman arising out of and in the course of such employment and disabling such workman from regular service in such employment and not purposely self-inflicted unless to better the duties of his employment.* You will notice the points of difference are that the Gillette Code limits these injuries to bodily injuries, and they must be due to accident. They must not be caused by intoxication nor by willful misconduct. It would seem that the employer should not be obligated to pay compensation in the cases excluded by the Gillette Code.

In Paragraph B, Section 3, Division 2, of the Gillette Code, the catastrophe hazard is limited to $50,000 for any one accident involving injury or death to more than one person in any single catastrophe. No such provision as this is contained in the McEwen-Mercer Code. The purpose of this provision is to place an insurable limit on the catastrophe hazard. In most states the liability insurance companies are not permitted to insure a risk involving a hazard involving more than 10 per cent of its capital. The catastrophe hazard limit of $50,000 would therefore be the greatest which a company of $500,000 capital could assume. My information is that insurance could not be obtained without some provision containing some such limitation.

In Section 5, Gillette Code, it is provided that the employer shall in all cases furnish reasonable medical and surgical first aid to the injured workman. This differs from the McEwen-Mercer Code in that the latter provides

for full surgical, medical and hospital aid for the first two weeks after the injury. Investigation would seem to show that while such medical and hospital aid for the first two weeks would be desirable from many standpoints, it would add so much to the cost that it would seem impossible to include it at the present time. The insurance companies seem to be of the opinion that the tendency would be for hospitals and doctors to absorb practically all of the whole maximum allowance of $100 provided. It has been estimated that this hospital and medical aid would amount to from 25 per cent to 40 per cent of the cost of present premiums.

The Gillette Code omits the extra compensation for disfigurement contained in the McEwen-Mercer Code. There is considerable doubt as to whether, disfigurement in any case without disability should be compensated, and there is much greater doubt as to whether if disability is compensated there should be additional compensation for disfigurement. Compensation for disability is generally understood to be the purpose of laws of this kind. The necessary cost of operation of this act would seem to make it inadvisable to include this additional payment for disfigurement.

In Section 10 of the Gillette Code, lump sum settlements between the employer and the workman are permitted except in cases of death or permanent total disability. The reasons for this are as follows:

1. It would seem advisable that the obligations created by the law should be cleaned up as fast as possible and liquidated unless such payments were opposed to the social good. It would seem as if immediate lump sum payments might do as much or more good in cases of temporary disability, total or partial, or permanent partial disability. It would seem highly desirable from every standpoint that the workman should be induced to come back to work as soon as he is able and become

an earner rather than to be an idler, and that unless absolutely necessary he should not be encouraged or taught to depend upon these continued payments. The immediate liquidation of these obligations so far as possible is highly desirable from every standpoint.

It is particularly desirable in the early years of this sort of legislation in order that it may be known as the years progress what the operation of the act has cost.

In Sections 13, 14 and 15 of the Gillette Code, slight changes are made in the matter of notice. The principal change is in Paragraph D, which provides "that unless notice be given within 90 days after the injury and claim therefor be made within six months after the injury, no compensation shall be allowed." This is in harmony with most of the foreign acts, and I believe is eminently fair to both parties.

Section 19 of the Gillette Code provides that "if the workman shall refuse examination at reasonable time or times at the request of the employer or his physician, or shall refuse any examination by the physician of the Board of Arbitration, he shall have no right to compensation." This differs from the McEwen-Mercer Code which merely suspends the compensation. It would seem fair that if the injured workman refused these examinations he should be cut off from his right to compensation. I can conceive of no bona fide reasons why the injured workman should refuse to submit to examinations.

Section 20 of the Gillette Code provides that all settlements made between an employer and an injured workman and his beneficiaries shall be binding except those on claim for death or permanent disability, which must first be approved by the Board of Arbitration. It would seem unnecessary and inadvisable to multiply the work of the Board of Arbitration and to prevent the employer and the workman from coming together

and making an amicable settlement. Society's interest in the matter would seem to be taken care of in providing that total permanent disability and death claims must be approved by the Board of Arbitration.

The next principal difference is in the insurance provision. Division 7 of the Gillette Code, Sections 45 and 46. The Gillette Code provides "and if he shall so insure to the workman the payment of the compensation provided by this Code he may then deduct from the workman's wages or require him to pay 20 per cent of the cost of so insuring him, but in no case shall such 20 per cent exceed 1 per cent of the workman's wages. In case of contribution by the workman, however, he shall be entitled to evidence of such insurance. In lieu of such insurance the employer may deposit and maintain a bond or other security approved by the District Court sufficient in amount to secure the amount of compensation provided by this Code.

Paragraph D is changed to correspond with the above.

The purport of this provision is plain: It means that if the employer carries his own risk and gives nothing but his own guarantee to the workman for the payment of the obligations, either immediate or deferred, he must pay these full compensations himself. But if to his own responsibility he adds the responsibility of an insurance company making it certain that in case of deferred payments or annuities due in case of death or permanent total disability the workman or his dependents shall receive the amount which is coming to them that the workman shall bear one-fifth the cost of such insurance. Bearing in mind that under our existing liability system, only about one injured workman in nine can recover, that under the proposed Code the full nine could recover, bearing in mind further both as shown by these recoveries and by the statistics both at

home and abroad relating to responsibility for accident, it would seem that if every workman is to be insured under the provisions of the Code against practically every accident which might befall him, he should bear a small portion of the cost of such insurance. The argument is made that the workman is receiving only half wages as compensation. Except from a purely socialistic standpoint I have never heard any reason advanced why a workman should receive full compensation. The best that one can hope to provide is a form of insurance which will afford partial aid. It is right here that I differ with the principle of the McEwen-Mercer Code and with the English law. I think we should aim at some sort of insurance rather than attempted compensation. Compensation is a misnomer and is impossible.

I am further fully convinced that the German industrial insurance scheme is in principle much better, and in application and effect far superior. I am finally convinced that the contribution of workmen to the cost of insurance in Germany is the greatest influence which is at work to prevent accidents, encourage the use of safety devices and to protect life and limb. It is true that the Gillette Code is very unlike the German system; our constitutional limitations make it necessary that they should be unlike, but it approximates it in principle, and I believe would very closely approach it in practical effect, and to my mind it certainly removes much of the sting of socialism from any system of this kind.

I therefore believe that a contribution by the workman is necessary from the standpoint of cost, is advisable from the standpoint of accident prevention, and is fair and just from the standpoint of the responsibility of the parties for the accidents which occur.

In Section 47, Paragraph F, it is provided that dependents must be relatives of the injured, and be resi-

dents of the United States at the time of the accident, except in cases where the restriction as to residence is inconsistent with treaty rights. It would seem hardly fair to impose upon the American employer the duty of compensating relatives in Europe, inasmuch as these same countries do not under their laws extend these benefits to residents of America. It would further seem necessary by reason of the interminable difficulties which would be encountered in determining the rights and degress of dependency of alleged foreign dependents.

The Gillette Code further restricts as presumed dependents, children under the age of eighteen; excludes compensation for disease and does not make the employer liable for acts of third parties not in his service. There are other minor differences in verbiage between the two Codes, and some minor differences in meaning, but I have attempted to point out the principal points of difference.

To my mind, the form of this Code is much more in harmony with American institutions and traditions, and with our generally accepted interpretation of our constitutional rights. It does not destroy individual liberty nor individual liability. It does not make necessary such a strained classification of industries calling those hazardous which now are not hazardous. It does not necessitate that the constitution be so strained to uphold that thereby other rights may be infringed or other liberties placed in jeopardy. It is an elective form of contract which the individual can accept or reject. Socialism and the guardianship of the state are not its principal components. With the modifications which the bill contains, with the provision for the contribution on the part of the workmen, with the reduction in the number of accidents, which I believe such contribution will bring about, I am in hopes that the cost of insurance will be reduced to a point where it could be borne by the industry.

I have no criticism of my associates. We differ, I trust honestly, in what we think should and can be done. It is very easy to encourage and broaden the scope of these acts and to extend the benefits as experience demands after the law has been given a trial. Ninety per cent of the workmen would be better off under this Code than they are now. It hardly seems to me right to enact a drastic law which all experience and history says will be burdensome on our industries when it is possible to begin in a way which cannot do great harm.

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